



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-01967
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

06/09/2016

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 26, 2012. On November 9, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on December 1, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 23, 2015, and the case was assigned to me on February 17, 2016. On

February 26, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 22, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until April 13, 2016, to enable him to submit additional documentary evidence. (Tr. 76.) He timely submitted AX C through E, which were admitted without objection. DOHA received the transcript (Tr.) on March 31, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.h, 1.i, 1.k-1.n, 1.p, 1.r, and 1.s. He denied SOR ¶¶ 1.c-1.g, 1.j, 1.o, and 1.q. He stated in his answer that he admitted SOR ¶ 2.a, alleging falsification of his SCA, but he denied intentional omission of material information. I have treated his response to SOR ¶ 2.a as a denial. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old operations manager employed by a defense contractor since August 2009. He has worked for defense contractors and held a security clearance since 1991.

Applicant received an associate's degree in electronics engineering technology in December 1989. (GX 2 at 1.) He has earned additional college credits toward a bachelor's degree in electronics, but he has not yet received a degree. All his student loans have been paid. (Tr. 35-36.)

Applicant married in July 1991. He and his wife have three sons, ages 23, 21, and 12, who live with them. (Tr. 33.)

Applicant filed a Chapter 7 bankruptcy petition in December 1994 and received a discharge in March 1995. (GX 6.) In a sworn statement in June 2002, Applicant told an investigator that his wife lost her job after the birth of their son in December 1992, causing them to fall behind on their bills. At the hearing, he testified that they had a new house, a second child on the way, and overindulged in credit cards to the point where they could not afford the payments. (Tr. 39.) They sought help from a credit counseling service, were still unable to pay their bills, and decided to file for bankruptcy. (GX 5.)

When Applicant submitted his SCA in October 2012, he answered "No" to all the questions about financial delinquencies. In a personal subject interview (PSI) in December 2012, he was confronted with the evidence of his delinquent debts, and he told the investigator that an "overwhelming amount of home repairs and car repairs" made him unable to make timely payments on his mortgage loan. He missed one \$1,250 payment and was unable to catch up. He testified that the decision to allow the house to be foreclosed and sold was precipitated after a brawl occurred in their front yard, with teenage combatants using firearms and other weapons. He testified that he believed his family was no longer safe in the house, and they "walked away." They

made some attempts to sell the house, but they did not use a realtor or any advertising. They rented another house and were unable to pay both the rent and the payments on their former residence. The mortgage lender offered to refinance the loan, but Applicant and his family had already moved out and rented another home, and they did not accept the offer. The bank foreclosed, sold the house, and used the proceeds of the sale to satisfy the debt. (Tr. 30-31, 45-49.)

During the PSI, Applicant also told the investigator that he had about \$700 in medical bills, but was unaware of them until he was contacted by a collection agency. He arranged a payment plan for the medical bills and resolved them in three or four months. He did not disclose the delinquent mortgage when he submitted his SCA because the mortgage was not yet delinquent. He told the investigator that he did not disclose the medical bills due to oversight. (GX 2 at 1.) At the hearing, he testified that when he filled out his SCA, he skipped over the questions for which he did not have information and returned to them after gathering the relevant information. Because he had not reviewed his credit report, he skipped over the financial questions, and he failed to go back and correct them. He testified that his supervisor was pressuring him to complete the SCA, and he submitted it hurriedly, not realizing that he had not corrected the section containing the financial questions. (Tr. 64-65, 69.)

Applicant filed a Chapter 13 bankruptcy petition in June 2013. His petition specifically listed the creditors alleged in SOR ¶¶ 1.a, 1.b, 1.i-1.n, 1.p, and several collection agencies. He was required by the bankruptcy court to take a personal financial management course and a credit counseling course. The petition was dismissed in October 2014 for failure to make the required payments. (GX 7.)

The SOR alleges 17 delinquent debts totaling about \$123,475. The delinquent debts alleged in the SOR are reflected in Applicant's credit bureau reports (CBRs) from November 2012 and February 2015 (GX 3; GX 4). The evidence concerning these debts is summarized below.

**SOR ¶ 1.a, judgment for \$2,457 entered in August 2009 for a delinquent credit-card account.** Applicant has taken no action to resolve this debt.

**SOR ¶ 1.b, delinquent credit-card account for \$7,309.** This debt was forgiven by the creditor and Applicant received an IRS Form 1099-C. (AX D.) Applicant was not sure why the creditor forgave the debt, except that it occurred during the time that lenders were being scrutinized by the U.S. Government regarding their lending practices. (Tr. 52.)

**SOR ¶¶ 1.c-1.f, medical debts for \$100, \$35, \$35, \$35, placed for collection in 2006 and 2007.** Applicant denied these debts, stating that he was unable to identify them. He testified that he paid several medical debts because their doctors would not provide treatment until the copayments were satisfied, but he was unable to determine if the debts reflected on the November 2012 CBR were among the debts they paid. (Tr. 53.) The CBR lists the debts but does not reflect the names of the original creditors and

provides no contact information for the original creditor or the debt collector. (GX 3 at 10.) The debts are not reflected on his February 2015 CBR. (GX 4.)

**SOR ¶¶ 1.g, medical debt for \$71, placed for collection in January 2010.** Applicant denied this debt, stating that he was unable to validate it with the creditor. The contact information for the collection agency is reflected in the November 2012 CBR, but not in the February 2015 CBR. (GX 3 at 12; GX 4.) The debt is not resolved.

**SOR ¶ 1.h, mortgage loan past due for \$40,506, with a balance of \$184,978.** Applicant admitted this debt. His February 2015 CBR reflects a “high credit” of \$168,578. (GX 4 at 1.) His March 2016 CBR reflects “credit grantor reclaimed collateral to settle defaulted mortgage.” (AX B.) He testified he did not know the sale price for the home, and he has not been contacted by the lender regarding a deficiency. (Tr. 55.) The debt is resolved.

**SOR ¶ 1.i, second mortgage loan charged off for \$52,445 in November 2012.** This debt is reflected in the February 2015 CBR. Applicant’s November 2015 and March 2016 CBRs reflect this debt as a paid charge off, settled for less than the full amount. (AX A at 3; AX B at 14.)

**SOR ¶ 1.j, mortgage loan past due for \$16,100, with a high credit of \$168,578.** This debt is reflected in the February 2015 CBR as included in the Chapter 13 bankruptcy. In his answer to the SOR and at the hearing, Applicant stated that this debt was purchased by the same lender as the debt in SOR ¶ 1.h. (Tr. 56-57.) His November 2015 CBR lists this debt as purchased by another lender but does not identify the new lender. (AX A at 6.) The fact that the debts in SOR ¶¶ 1.h and 1.j are both mortgage loans for the identical amount indicates that they are the same debt. Both debts are resolved.

**SOR ¶ 1.k, computer purchase, charged off for \$1,851 in August 2012.** Applicant has taken no action to resolve this debt.

**SOR ¶ 1.l, charge account for car repairs, charged off \$992 in November 2012.** Applicant has taken no action to resolve this debt.

**SOR ¶ 1.m, car loan charged off for \$471 in December 2012.** Applicant’s February 2015 CBR reflected this debt as charged off. His November 2015 and March 2016 CBRs reflect that it was paid in February 2015. (AX A at 9; AX B at 11; Tr. 60.)

**SOR ¶ 1.n, collection account for \$430, opened in September 2012.** Applicant admitted this debt in his answer to the SOR. It is reflected in his February 2015, November 2015, and March 2016 CBRs. (GX 4 at 2; AX A at 10; AX B at 17.) At the hearing, he testified that he had not attempted to contact the collection agency or the original creditor because the CBRs reflect no account number or other information identifying the debt. (Tr. 61.) However, his November 2015 and March 2016 CBRs reflect the name of the collection agency, an address, and a telephone number. (AX A

at 10; AX B at 17.) He has not filed a dispute with the credit reporting agencies. (Tr. 72.) This debt is not resolved.

**SOR ¶ 1.o, collection account for \$409, opened in May 2009.** Applicant denied this debt, stating that he was unable to validate it and could not find it in his CBRs. He testified that he does not believe he has ever had an account with this creditor. (Tr. 61.) It is reflected in his February 2015 CBR (GX 4 at 3) but not his November 2015 and March 2016 CBRs (AX A; AX B.) He has not disputed the debt. It is not resolved.

**SOR ¶ 1.p, furniture purchase contract past due for \$138.** This debt was paid in full in September 2011. (AX E.)

Applicant testified that he had contacted a debt-resolution agency to assist him, but he had not signed a contract or begun a program with the agency. (Tr. 50.) His contact has been limited to emails sent to the debt-resolution agency listing some of the creditors and the amounts owed. (Tr. 71.)

Applicant currently earns about \$105,000 per year. (Tr. 37.) His take-home pay is about \$5,600 per month. He relies heavily on his wife to manage the family finances. (Tr. 39.) After he pays all his living expenses, including rent and car payments, his net monthly remainder is about \$700. (Tr. 67.)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations)**

The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The debts alleged in SOR ¶¶ 1.h and 1.j are duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005). I have resolved SOR ¶ 1.j for Applicant

The medical debts alleged in SOR ¶¶ 1.c-1.f and 1.q and the CBR entries on which they are based do not identify the original creditor or collection agency and provide no contact information, making it virtually impossible for Applicant to validate the debt or contact the creditor to resolve it. The allegations in SOR ¶¶ 1.c-1.f and 1.q do not comply with Directive ¶ E3.1.4, which provides that the SOR "shall be as detailed and comprehensive as the national security permits." Thus, I have resolved SOR ¶¶ 1.c-1.f and 1.q for Applicant.

Applicant's admissions in his answer to the SOR, his testimony at the hearing, and the documentary evidence establish the debts alleged in SOR ¶¶ 1.a, 1.b, 1.g-1.i, and 1.k-1.p, and the two bankruptcies alleged in SOR ¶¶ 1.r and 1.s. Two disqualifying conditions under this guideline are established: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's debts are numerous, several are still unresolved, and they were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's Chapter 7 bankruptcy was due in part to his wife's loss of employment, but he admitted that it was also due to excessive spending. His default on the mortgage loan was caused in part on neighborhood violence and unexpected house and car repairs, but he admitted that he was already behind on his mortgage payments when violence occurred. He made no serious attempts to sell the house, and he declined to accept a favorable loan modification when it was tendered. The medical debts alleged in SOR ¶¶ 1.c-1.f and 1.q may have been incurred under conditions largely beyond his control, but Applicant was unable to describe the conditions in which they were incurred because he could not identify them, due to the absence of information in the CBRs and the SOR.

AG ¶ 20(c) is not fully established. Applicant was required by the bankruptcy court to complete financial counseling, but his financial situation is not yet under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.h-1.j, 1.m, and 1.p. It is not established for the credit card debt in SOR ¶ 1.b that was forgiven for unknown reasons, the defaulted mortgage loan in SOR ¶ 1.h, which was satisfied by foreclosure and sale. It is not established for the debts alleged in SOR ¶¶ 1.a, 1.g, 1.k, 1.n, and 1.o, which are unresolved.

AG ¶ 20(e) is not established. Applicant testified that he disputed the debt in SOR ¶ 1.j, but he submitted no documentation to support his testimony.

### **Guideline E, Personal Conduct**

The SOR alleges that Applicant falsified an SCA submitted on or about September 30, 2014. The only SCA in the record was submitted on October 26, 2012. The discrepancy in dates was not raised at the hearing, and all evidence pertained to an SCA submitted on October 26, 2012. On my own motion, I have amended SOR ¶ 2.a to allege falsification of an SCA submitted on October 26, 2012.

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . .” When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant’s experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

When Applicant submitted his SCA in October 2012, he had held a clearance since 1991 and had revalidated his clearance at least once. He is an experienced, well-educated adult. Before he submitted his SCA, a judgment had been entered against him in August 2009 for the delinquent credit-card account in SOR ¶ 1.a, the delinquent credit-card account in SOR ¶ 1.b had been charged off in October 2008, the account for the computer purchase alleged in SOR ¶ 1.k had been charged off in August 2012. He had incurred an “overwhelming amount of home repairs and car repairs,” was struggling with making his mortgage-loan payments, and he knew he had outstanding medical bills. Although he relied heavily on his wife to manage the family finances, he knew that they were struggling financially. Under the circumstances, I found his explanation for answering all the financial questions in the negative and omitting all his delinquent debts implausible and unconvincing. AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(a) is not established. Applicant made no effort to correct his admissions until he was confronted with the evidence during his PSI.

AG ¶ 17(c) is not established. Applicant’s falsification of his SCA was not “minor,” because falsification of a security clearance application “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) It was not recent, but it was perpetuated by his repeated assertions that it was unintentional. It is arguably “infrequent” because there is no evidence of other falsifications. It did not occur under unique circumstances.

## Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines F and E in my whole-person analysis and considered the factors in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

## Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraphs 1.k-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant

Subparagraph 1.p:	For Applicant
Subparagraphs 1.r-1.s:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge