



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06043

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/09/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to establish a track record of financial responsibility. He does not have a current financial problem and his finances are under control. He mitigated the Guideline F security concerns. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 17, 2014, seeking to retain a clearance required for his job. On December 30, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on January 30, 2015, and elected to have his case decided on the written record in lieu of a hearing.

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<sup>1</sup> DOD 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated July 13, 2015, was provided to him by transmittal letter dated August 6, 2015. He acknowledged receipt of the FORM on August 18, 2015. Applicant was allowed 30 days to submit any objections to the FORM and to provide material in rebuttal, extenuation, and mitigation. As of October 23, 2015, Applicant had not responded to the FORM or submitted any information. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 1, 2015.

### **Ruling on Evidence**

Department Counsel's submission included a summary of a personal subject interview on May 5, 2014. (Item 5) The summary was not authenticated as required by the Directive ¶ E3.1.20. Department Counsel's submission included a footnote advising Applicant that Item 5 was not authenticated and that failure to object to Item 5 might constitute a waiver of the authentication requirement.

Applicant did not respond to the FORM. However, a *pro se* applicant's failure to object to an unauthenticated personal subject interview is not tantamount to waiver of the authentication requirement. Waiver means "[t]he voluntary relinquishment or abandonment - express or implied - of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." Black's Law Dictionary, 1717 (Bryan A. Garner ed., 9th ed., West 2009). The record does not reflect that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not reflect that he understood the implications of waiving an objection to the admissibility of Item 5. Thus, Item 5 is inadmissible and I have not considered it.

### **Procedural Issue**

In the FORM, Department Counsel moved to withdraw SOR ¶ 1.d, because Applicant was an authorized user of this account, and in his opinion, Applicant was not liable for this debt. I granted the motion as requested.

### **Findings of Fact**

Applicant admitted all the SOR allegations with explanations. However, he noted that SOR ¶ 1.c was a duplicate of the account alleged in SOR ¶ 1.a. His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 55-year-old engineering support technician employed by a federal contractor. He served on active duty in the U.S. Navy from 1980 until 1995, when he was honorably retired. He married his first spouse in 1989 and divorced in 2001. He married his spouse in 2002. He has four children, ages 3, 11, 16, and 23.

Applicant was first granted access to classified information at the secret level during his Navy service in 1980. The DOD continued his eligibility for a secret clearance in 2003, when Applicant worked for a federal contractor. Apparently, Applicant has continuously possessed a security clearance since then.

Applicant's 2014 SCA indicates that he worked for a federal contractor from 2003 to 2006. In January 2006 he was laid off because of a decrease in work and remained unemployed until May 2006. From May 2006 to June 2007, he worked for a private company. Applicant has worked for his current employer, a federal contractor, since June 2007.

Applicant disclosed in Section 26 (Financial record) of the 2014 SCA that he had financial problems that included a lien filed against his home for a delinquent credit card account. He explained that in 2007, he purchased a house and renovated it with the intent to make it his permanent residence. His plan was to move into the renovated home, and then sell his current home to pay off the debts incurred in the renovation. Before he moved in, the house was burned to the ground and he lost his investment in the property. The insurance refused to pay the claim. Applicant retained an attorney and filed suit to recover the insurance money. After five years of litigation, the settlement he received was insufficient to repay the creditors (for the renovation expenses) and his attorney.

Applicant admitted that he used the accounts alleged in SOR ¶¶ 1.b (credit card), 1.c (retail warehouse credit account), and 1.d (credit card) to renovate the house that burned down. A review of the credit reports (FORM, Items 2, 4, and 6) and a letter from an attorney, dated January 29, 2015 (stating Applicant paid the debt in SOR ¶ 1.a), leads me to conclude that the account alleged in SOR ¶ 1.c was sold to the creditor alleged in SOR ¶ 1.a. Accordingly, SOR ¶ 1.c will be consolidated with SOR ¶ 1.a.

Applicant claimed that he tried numerous times to resolve his delinquent debts, but was unsuccessful. Apparently, he considered refinancing his current home or selling it to resolve his delinquent debts. He also stated other circumstances that prevented him from addressing his delinquent debts, such as: a cardiac illness that put him in the hospital for some periods, the birth of his youngest child, his wife's developing a chronic illness after the birth of the child, and her breaking an ankle recently and requiring extensive surgery. He implied that his earnings were insufficient to pay his living expenses and the delinquent debts. Notwithstanding his claims, Applicant presented no documentary evidence of any efforts taken to resolve these debts since he acquired them, until he was served with the SOR.

Applicant noted that he served on active duty 15 years and honorably retired from the Navy. After his retirement, he continued to work government-related jobs that required his eligibility for a clearance. He has held a clearance during the last 30 years without any security issues or concerns. There is no evidence to show that Applicant has ever compromised his security clearance or had any security issues, except for the current SOR allegations.

Concerning SOR ¶¶ 1.a and 1.c (consolidated), Applicant presented documentary evidence showing that he settled and paid the account in full.

SOR ¶ 1.b (\$817) concerns a delinquent credit card account that was opened in 2006, and has been delinquent since 2008. According to the 2014 and 2015 credit reports (FORM, Items 4 and 6), Applicant was an authorized user of this account. The allegation in SOR ¶ 1.d (\$5,553) was withdrawn by the Government because Applicant was an authorized user of the account and not liable for the debt.

Applicant provided little information about his financial situation. He did not provide any information about his and his wife's income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget.

Nevertheless, the FORM credit reports show numerous accounts in good standing and several accounts paid after being delinquent or charged off. I note that Item 6 shows SOR ¶¶ 1.b and 1.d as having "\$0 balance and \$0 past due." Likely, because he was an authorized user of the accounts and not liable for the debts, or the accounts are more than seven years old and were removed under the Fair Credit Act. It appears that Applicant never was legally responsible for either account.

### **Policies**

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG lists disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The

applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Applicant had one account delinquent since 2008 (SOR ¶ 1.a). It raises the applicability of two financial considerations disqualifying conditions: AG ¶ 19(a) “inability or unwillingness to satisfy debts” and AG ¶ 19(c) “a history of not meeting financial obligations.”

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

- (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;
- (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;
- (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;

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

(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), 20(b), and 20(c) apply and mitigate the financial security concerns. Applicant's financial problems resulted from the burning of the house he purchased and renovated in 2007. Also, the insurer refused to pay the claim over the course of five years until Applicant was forced to file a suit to recover the insurance money. Additionally, Applicant and his wife had health problems that prevented him from addressing his delinquent accounts in a timely manner.

Applicant provided little information about his current financial situation. Nevertheless, the credit reports show that he does not have a current financial problem, and that he seems to be living within his financial means.

On balance, and considering Applicant's honorable service and years possessing a security clearance with no security issues, I find that Applicant presented sufficient information to establish that his financial problem is under control. Applicant's answer to the SOR shows that he understands the importance of him being financially responsible to be eligible for a clearance and to retain his employment.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant's evidence show that he has a track record of financial responsibility, that he currently does not have a financial problem, and his finances are under control. He mitigated the Guideline F security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d :	Withdrawn

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge