



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 12-05202<sup>1</sup>  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

06/12/2015

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial and personal conduct security concerns.

**Statement of the Case**

On May 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) sent Applicant interrogatories concerning his finances. After receiving Applicant's answers to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated October 28, 2014, detailing security concerns for financial considerations under Guideline F and

<sup>1</sup> The Statement of Reasons (SOR) lists the case number as 14-02138. This is the correct case number. However, the case number 12-05202 was incorrectly entered into the Defense Office of hearings and Appeals (DOHA) data base. Once entered into the data base, the case number cannot be changed. Both case numbers are noted on some correspondence and documents in the file. Since the number in the data base cannot be changed, the case number for the decision will be 12-05202.

personal conduct under Guideline E. The action was taken 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on October 28, 2014. He admitted the allegation under Guideline E. He admitted three debts stating they were paid or being paid. He denied the other four debts noted that they were paid. Department Counsel was ready to proceed on January 16, 2015. The case was initially assigned to another administrative judge who had to postpone a hearing scheduled for February 26, 2015, because of severe inclement weather. The case was reassigned to me on March 13, 2015. A new notice of hearing was sent to Applicant on March 27, 2015, scheduling a hearing for April 16, 2015. I convened the hearing as scheduled. The Government offered eight exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 8. Applicant testified, and submitted three exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through C. I kept the record open for Applicant to submit additional documents. Applicant timely submitted six documents that I marked and admitted into the record as AX D through I. Department Counsel did not object to the admission of the additional documents. (GX 9, e-mail, dated June 8, 2015). I received the transcript of the hearing (Tr.) on April 24, 2015. The record closed on June 5, 2015.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 46-years-old, and has been employed as a maintenance trainer for a defense contractor since April 2014. He served on active duty in the U.S. Army for 22 years from July 1989 until April 2011. He received an honorable discharge as a sergeant first class (E-7). After retiring, Applicant worked for various defense contractors, and even served for two years in Afghanistan from March 2012 until March 2014, as a heavy equipment mechanic and logistician. His evaluation reports from active duty show his consistently high level of performance. He was always rated as among the best and to be promoted to the next highest grade immediately. He was awarded the Meritorious Service Medal, the Bronze Star, five Good Conduct Medals, the Army Commendation Medal, the Army Achievement Medal, the NATO Medal, the gold Recruiters Badge with Achievement Stars, parachute badge, the driver's badge, and the mechanic's badge. He served two one year tours in Afghanistan and another one year tour in South West Asia. (GX 1, e-QIP, dated May 8, 2014; AX B, Military Records)

Applicant first married in August 1991 and divorced in August 2005. He remarried again in December 2008. He has two children from his first marriage and he is current with the child support payments and payments to his former wife. These payments

come directly from his military retired pay. He has two step-children from his second marriage living at home. (Tr. 35-37; GX 1, e-QIP, dated May 8, 2014) His net current monthly income is \$4,645; \$3,446 from his defense contractor employer, \$1,609 in Department of Veteran's Affairs (VA) disability, and \$716.93 remaining from his retired pay after deductions for his child support and spousal payments. His monthly expenses are about \$3,500, leaving in excess of \$1,000 monthly in discretionary funds. Most of these funds are now earmarked to pay his remaining delinquent debts. (Tr.44-48; AX A, Pay sheet, dated April 10, 2015)

The SOR lists and credit reports (GX 5, dated February 3, 2006; GX 6, dated January 28, 2011; GX 7, dated November 22, 2013; and GX 8, dated July 31, 2014) lists the following seven delinquent debts for Applicant: a car loan account charged off for \$16,169 (SOR 2.a); a credit card debt charged off for \$5,709 (SOR 2.b); an account placed for collection for \$587 (SOR 2.c); a charged off account for \$2,074 (SOR 2.d); a loan account in collection for \$2,075 (SOR 2.e); a medical account in collection for \$1,997 (SOR 2.f); and a credit card account in collection for \$572 (SOR 2.g). The total amount of the delinquent debt is approximately \$29,000, with the car loan accounting for about 60% of the delinquent debt.

Applicant was divorced from his first wife, but still on active duty, when he started providing the primary care for his grandmother and mother in 2006. He was making sufficient income in the military to pay child and spousal support, maintain a house for his grandmother and mother, and meet his own expenses. He took on the task of providing for his grandmother and mother because none of his siblings or other relatives would assist them. He remarried in 2008 and his household expenses increased. He was having difficulty maintaining two full household, so he started to incur delinquent debts. He retired from the Army in 2011 and initially found employment in the local community. His salary did not permit him to maintain two households and his support payments. He took employment with a defense contractor and served in Afghanistan for two years to receive increased pay to cover his expenses and repay his delinquent debts. He had to resigned and returned to the United States after two years in March 2014 to care for his grandmother who was deteriorating and a delinquent daughter. He has been unable to meet all of his self-imposed financial obligations. His grandmother passed away in February 2015 and his mother moved in with his sister. Applicant no longer has to maintain two households. He has an extra \$1,700 monthly to now use to pay his delinquent debts. (Tr. 32-39)

Applicant consulted with a financial advisor who assisted him in establishing a plan to pay his delinquent debts. He plans to use a large portion of his mid-month pay to pay his delinquent debts. He will put the additional funds on a bank card and use the bank card to pay his debts. (Tr. 39-44; AX A, Letter, undated) The debts at SOR 2.a and 2.b are Applicant's largest debts. His plan is to pay \$529.30 monthly to the creditor at SOR 2.a. He made a payment on this debt in May 2015 using the funds on the bank card. (AX H, letter, dated May 13, 2015) His financial advisor is still negotiating a payment plan with the creditor for the debt at SOR 2.b. (AX A, Letter, undated; AX I, e-Mail, dated June 1, 2015)

Applicant disputes the account at SOR 2.c, but the dispute has not been resolved. He paid the debt a SOR 2.d on May 1, 2014. (AX F, Account Statement, dated May 31, 2014) He is paying the debt at SOR 2.e according to his plan. He made a payment on this debt on May 12, 2015. (AX E, Letter, dated May 12, 2015). He paid the debt at SOR 2.f on May 14, 2014. (AX F, Account Statement, dated May 31, 2014). He paid the credit card debt at SOR 2.g. on May 31, 2015. (AX G, Letter, dated May 31, 2015)

Applicant was an Army recruiter in Mississippi from August 2001 until March 2005. When Applicant was a recruiter, there was pressure on recruiters to make their recruiting goal. Recruiters resorted to any means to qualify a potential recruit for military service. In 2004, Applicant signed the name of a federal judge to an adoption paper to qualify a potential recruit for military service by having an approved adoption plan for the recruit's child. Forging documents was not an unusual practice for recruiters. Applicant's actions were discover in mid-2006, and he, his recruiting supervisor, the recruiting command's sergeant major, and Applicant's recruiting commanding officer were required to appear before the federal judge to apologize. Applicant admitted he forged the adoption document. Applicant pled guilty to forgery, was placed on probation for one year, and was fined \$200. (Tr. 29-32; GX 3, Federal Bureau of Investigation report, dated January 13, 2006; GX 4, Army Criminal Investigation Division Report, dated February 3, 2006)

Applicant presented 18 letters of recommendation from fellow workers, military supervisors, soldiers he served with, former teachers, religious personnel, and friends. They all commented that he is highly respected for his professionalism, leadership, work ethic, and character. They comment favorably on his reliability, sincerity, sense of responsibility, trustworthiness, and good judgment. They trust him to properly manage sensitive and classified information and recommend he be granted eligibility for access to classified information. (AX C, Letters, Various Dates) Include with his answer to the SOR was a letter from a former military supervisor who stated that Applicant is trustworthy and reliable and should be granted eligibility for access to classified information. (Response to SOR, Letter, dated November 25, 2014)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations**

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed

terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his or her finances in such a way as to meet their financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant incurred delinquent debt when he took on the responsibility to care for his mother and grandmother while also providing for his family and paying his child and spousal support. He initially could meet his financial responsibilities, but with increased expenses he incurred debt he could not pay. Applicant's history of delinquent debts is documented in his credit reports, his responses to interrogatories, and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under the Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and (c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy delinquent debt.

I considered the following Financial Considerations Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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; and
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions at AG ¶¶ 20 (a) and (b) apply. Applicant incurred delinquent debt because he voluntarily decided to assist his mother and grandmother while maintaining his own family. He eventually could not afford to maintain two households and incurred debt he could not pay. Applicant had to care for his mother and grandmother because other family members were unable to assist them. The circumstances requiring Applicant to support two households were largely beyond his control. His grandmother recently passed away and his mother now lives with his sister. He no longer has to maintain two household. These unique circumstances are unlikely

to recur. Applicant has extra funds now to pay his delinquent debts. He consulted a financial advisor who provided him a plan for payment of his debts. He paid three of the seven delinquent debts in the SOR, is paying two others under payment plans, has disputed another debt as unknown, and his financial adviser is negotiating a payment plan for the one remaining debt. His payment plan and payment of some of the debts are a clear indication that he is acting responsibly and the problem is being resolved or under control.

Applicant consulted a financial advisor who developed his payment plans and negotiated with creditors. The financial problems are being resolved and are under control since debts have been or are being paid. AG ¶20(c) applies.

AG 20(d) applies. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant presented evidence that he has a plan to pay his delinquent debts. He presented evidence that he paid three of his debts, is making payments under payment plans on two other debts, disputed one debt, and his financial advisor is negotiating a payment plan on the remaining debt. Applicant has sufficient funds and a viable plan to resolve his remaining debts. Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind her. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

Applicant forged an adoption document while serving on recruiting duty for the U.S. Army. He pled guilty to the offense and was fined and sentenced to probation. He paid the fine and the period of probation has been completed. The Government

presented criminal information reports to verify the offense. Applicant admitted the offense. The information concerning the offense and Applicant's admission are sufficient to raise the following Personal Conduct Disqualifying Condition under AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information).

I considered the Personal Conduct Mitigating Conditions 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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and AG ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused the untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur).

This incident happened under the unique circumstances of pressure to qualify recruits while Applicant was on recruiting duty. The offense happened over ten years ago and Applicant paid the fine and served his period of probation. This is the only indication of adverse personal conduct in Applicant's otherwise clean record. Since he is no longer on active duty and a recruiter, the circumstances are unlikely to recur and do not cast doubt on Applicant's reliability, trustworthiness or good judgment. The incident happened long ago, was infrequent, and minor. Applicant admitted his error in judgment, and has taken positive steps to overcome the factors that cause his inappropriate behavior. AG ¶ 17(c) and (d) apply. Applicant mitigated the personal conduct security concerns. I find for Applicant as to personal conduct.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility 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.



Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant 22 years of honorable service in the U.S. Army and his service in combat zones. I considered the laudatory comments and recommendation that he be granted eligibility for access to classified information from his co-workers, former military supervisors, and friends.

I considered that Applicant incurred delinquent debt under unique circumstances beyond his control. I considered that Applicant has paid some of his delinquent debt, is paying others debts under payment plans, and has a plan to resolve the remaining debts. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances. Applicant's payment of delinquent debts and his plan to continue to resolve his remaining debts shows Applicant's responsible management of his finances. Applicant presented sufficient information that he will continue to responsibly manage his financial obligations. This indicates that he will be concerned or act responsibly in regard to classified information. Applicant mitigated security concerns for personal conduct for forging a document to qualify a person for active duty as a military recruiter. The offense happened over ten year ago, and Applicant paid his fine and his period of probation is completed.

Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated security concerns arising under the financial considerations and personal conduct guidelines.

### **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 E:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a – 2.g:	For Applicant

## **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge