



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



In the matter of:

	)	ISCR Case No. 12-05383
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/28/2013

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 13, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 3) He was interviewed by a security investigator on March 16, 2012, and verified the accuracy of the interview summary on August 3, 2012. (Item 4) On September 26, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 received the SOR on October 17, 2012. He answered the SOR on November 2, 2012, admitting the one allegation under Guideline F. Applicant elected to have the matter decided on the written record. (Item 2) Department Counsel submitted its written case on December 3, 2012. Applicant received a complete file of relevant material (FORM) on January 7, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. The case was assigned to me on February 15, 2013.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 53 years old and has worked for a defense contractor as a security officer since August 2005. Applicant received an associate's degree in 1979. He has been married since May 1981, and has one grown son. He was employed by a major U. S. company as a leader/operator from March 1980 until January 2005 when the company downsized its operation and he was laid off. He was unemployed from January 2005 until commencing work with his present employer in August 2005. He also works a part-time position as a fire safety inspector a few days a month. (Item 3) His personal financial statement shows a net monthly salary of \$2,189.74, with expenses over \$2,770. His yearly net pay is approximately \$30,000. (Item 4 at 3)

Credit reports (Item 5, dated August 23, 2012; Item 6, dated June 12, 2012; and Item 7, dated February 25, 2012) show he has a delinquent debt on his mortgage loan. (SOR 1.a) Applicant has lived in the same house since November 1986. (Item 3 at 6) The mortgage loan balance listed on credit reports is approximately \$116,000. The delinquency was \$13,446 in February 2012, rose to \$16,210 by June 2012, and was at \$19,000 in August 2012. The credit reports show the last full payment was in November 2010. There may have been a partial payment in February 2011. There are no payments made after February 2011. The credit reports also reflect that all other debts are paid as agreed.

When Applicant was laid off in January 2005, he received a severance payment from his employer. He used the severance to live on until he found employment in August 2005. He did not indicate that he received unemployment compensation when he was unemployed. Applicant's wife became sick in 2005 and was unable to work. She did not qualify for disability benefits. He started using his retirement fund to pay his bills starting in October 2005. He exhausted that account in 2008. He submitted a loan modification request to the mortgage company and the monthly payments were reduced from \$1063 to \$750. However, the payments rose to \$980 a few months later. (Item 4 at 2; See, Loan Modification Documents at Item 4)

Applicant noted he submitted a second loan modification request. He indicated the modification was approved in July 2012, and his monthly payments would be

reduced to \$770. However, he did not present any documents to verify that the loan modification was approved and that he made payments on the new loan. He did state that with the loan modification he would be able to make the required monthly payments. (Item 4 at 2-3)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 for obtaining 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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, thereby raising 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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his 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 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 in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent mortgage loan, listed in credit reports and admitted by Applicant, raises Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The delinquent debt shows a history of both an inability and unwillingness to the debt.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition. The burden does not shift to the Government.

I considered Financial Considerations Mitigating Condition (FC MC) 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); and FC MC ¶ 20(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). These mitigating conditions do not apply.

Applicant was employed for over 25 years before being laid off. When laid off, he received a severance package which he used for living expenses until he found employment. He was unemployed for approximately eight months. He has been employed since August 2005 and also has a part-time job. His wife became ill in 2005 and has been unable to work. His only delinquent debt is his mortgage loan, which is in

arrears about \$19,000. The mortgage loan was modified once and he still was unable to make the required payments. He indicated the mortgage was modified again in July 2012 but he provided no documentation to verify the modification or any payments after the modification. While he states he can meet his requirement with the modified mortgage, his personal financial statement shows his expenses will still exceed his income. No mortgage payments have been made since November 2010. His layoff and his wife's illness were circumstances beyond his control. His personal financial statement shows his expenses exceed his income. He presented no information of any efforts to modify or change his life style and expenses so the expenses do not exceed his income. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. He has not presented information to show he acted responsibly towards his finances.

I considered FC MC ¶ 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). Applicant presented no information to indicate an agreement with a debt solution company which may require that Applicant receive credit counseling. There is no indication his financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant failed to establish such a meaningful track record. Applicant did not present sufficient evidence to show a modified mortgage agreement and payment made on the new loan amount. His personal financial statement does not show he has sufficient income to meet his financial obligations in spite of many years of steady employment. Applicant's lack of documented action on his mortgage loan is significant and disqualifying. Based on the acknowledged delinquent mortgage debt and the failure to establish payment of the debt, Applicant has not acted responsibly. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the

applicant's conduct and all relevant circumstances. The 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 eligibility for access to classified information 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. Applicant has not established a meaningful track record of paying his delinquent mortgage loan. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent mortgage loan and resolve his financial problems. He has not even shown a credible plan to resolve and pay the debt. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Eligibility for access to classified information is denied.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge