



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



In the matter of:

|                                  |   |                        |
|----------------------------------|---|------------------------|
|                                  | ) | ISCR Case No. 12-12134 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2016

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant provided adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 11, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on July 2, 2012. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On November 27, 2015, 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; 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 December 29, 2015. He admitted the 11 financial allegations. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on February 3, 2016. Applicant received a complete file of relevant material (FORM) on February 10, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a reply to the FORM. I was assigned the case on May 5, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could objection to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant responded to the FORM, but he did not object to consideration of the Personal Subject Interview (PSI). Since Applicant did not object to the PSI, I will consider information in the PSI in my decision.

### **Findings of Fact**

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

Applicant is 60 years old, and has been employed by a defense contractor as a calibration manager since 1992. He received a bachelor's degree in 1978 and an associate's degree in 1991. He married in October 1985 and divorced in October 1993. He has one child. (Item 3, e-QIP, dated May 11, 2012; Item 4, Personal Subject Interview, dated July 2, 2012)

The SOR lists, credit reports (Item 5, dated May 19, 2012, and Item 6, dated December 8, 2014) and information in the PSI confirm the following finances issues for Applicant: failure to file federal income tax return for 2008 (SOR 1.a); failure to file state income tax return for 2008 (SOR 1.b); garnished wages in 2008 in the amount of approximately \$12,000 (SOR 1.c); state tax liens for the same state filed in February 2014 for \$4,001 (SOR 1.d), for \$4,432 (SOR 1.e), for \$4371 (SOR 1.f), and for \$7,071 (SOR 1.g); two medical accounts in collection for \$33 (SOR 1.h), and \$765 (SOR 1.i); a telephone debt in collection for \$123 (SOR 1.j), and a judgment on a medical account for \$738 (SOR 1.k).

Applicant admitted each of the SOR allegations. Applicant informed the OPM agent in the PSI that he used a tax service to electronically prepare and file his federal and state taxes for 2008. He had a sizable withdrawal from his 401k account that year that may have had tax implications. He believed that the withdrawal and tax return would be done by the tax service in a manner that would not result in a tax liability. He did not know there was a tax issue until he received a notice of taxes due from the Internal Revenue Service (IRS). He did not understand the problem, failed to follow-up, and does not remember receiving any further notices from the IRS. He contacted the IRS when they garnished his wages for \$2,200 per month starting in January 2012. At the time of the PSI in July 2012, he claims to have paid almost all of the delinquent federal taxes by garnishment.

The issue also affected his state taxes. Applicant told the investigator that he was refiling his 2008 tax returns which should negate any federal or state tax liability. He told the security investigator that he always filed his income tax returns on time. He had not failed to file any other state or federal tax returns. (Item 4, Personal Subject Interview, dated July 2, 2012, at 1)

Applicant refiled his 2008 federal tax return. In his response to the FORM, Applicant included a number of documents pertaining to his state and federal taxes. (Item 7) Applicant included a refund check of \$1,516.97 for tax year 2008 issued by the United States Treasury on March 4, 2016. (Item 8) Since Applicant had approximately \$12,000 garnished from his wages for 2008, it is apparent that with a refund of only \$1,516.97, he owed federal taxes for 2008. His 2008 federal taxes are now settled. Applicant had liens for state tax. (Item 9, Item10) Applicant submitted four letters of satisfaction of tax liens which correspond to the state tax liens in SOR allegations 1.d, 1.e, 1.f, and 1.g. The state tax debts have been resolved.

Applicant also reported in his response to the FORM that he contacted the creditors for the remaining debts. He called the collection agency concerning the \$33 debt at SOR 1.h. They had no record of the debt. He also called the collection agency for the medical debt at SOR 1.i but they could not provide details of the debt. He will contact the doctors who were the original creditors to discuss the debt. He stated the telephone debt at SOR 1.j has been paid but he did not provide any documents verifying the payment. Applicant contacted the company that entered the judgment for the medical debt at SOR 1.k. The creditor had no record of a \$738 debt which became a judgment. They only had a record of another debt which was paid in June 2011. (Item 7)

### **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 finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit report, his responses to the security investigator in the PSI, and his admissions to the SOR allegations. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt. The information is sufficient to raise the security concern at AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same).

I considered the following Financial Consideration Mitigating Condition 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;

(d) the individual has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

The mitigating condition at AG ¶ 20(a) does not apply. At the time the SOR was issued, Applicant's unpaid taxes were a continuous course of conduct and thus current.

There was more than one lien for state taxes indicating that the tax filing issue may not be infrequent. Mitigating condition AG ¶ 20(b) applies in part. The failure to file the correct tax return was within Applicant's control. Even though Applicant had his tax return prepared by a tax service, he is ultimately responsible for the filing of the correct tax returns. He admits he did not understand the tax issues and failed to follow-up with the tax service or the IRS. However, he finally acted reasonably and responsibly by refiling the tax return and paying all federal and state taxes. The mitigating condition at AG ¶ 20(c) partially applies. Applicant did not present any information on financial counseling, but his finances are under control.

AG ¶ 20(d) applies. Applicant provided sufficient information in his response to the FORM to verify that his federal and state taxes have been resolved and all tax liens satisfied. In addition, he reported his efforts to resolve the four remaining small debts. Three of the debts could not be verified by the creditors and the fourth debt was paid. Even though Applicant did not provide documentary proof of payment of this debt, the fact that he paid the large income tax debts indicates that he would have paid the one small remaining communication debt. Applicant established his good-faith efforts to resolve his debts. AG ¶ 20(e) does not apply since Applicant did not dispute any debts but admitted them.

Applicant established his reasonable and responsible action to resolve his financial problems. It is now clear that his financial problems are under control. Based on Applicant's actions to pay his debts, it is clear that Applicant has been reasonable and responsible in regard to his finances. His reasonable and responsible action towards his finances is a strong indication that he will protect and safeguard classified information. Applicant 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.

