



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



In the matter of:

	)	ISCR Case No. 13-01075
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

06/18/2014

**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 for financial considerations under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 21, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor (Item 5). The Department of Defense (DOD) issued interrogatories to Applicant to clarify information in his background, after receiving an investigation conducted by the Office of Personnel Management. (Item 6) After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. On November 7, 2013, 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 November 13, 2013. (Item 3) He answered the SOR on that date, admitting the eight allegations of delinquent debt under Guideline F, and elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on March 11, 2014. Applicant received a complete file of relevant material (FORM) on April 21, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He timely provided additional information in response to the FORM. (Letter and attachments, dated May 19, 2014) Department Counsel did not object to consideration of the additional information. (Department Counsel's Response, dated June 3, 2014) I was assigned to case on June 9, 2014.

### **Findings of Fact**

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

Applicant is 52 years old and employed as a long haul over-the-road truck driver for a defense contractor since September 2011. He has been a long haul professional truck driver for many years, including years when he was a self-employed truck driver. When on the road, he lives in his truck. He had some periods of unemployment during his driving career. He has been married for over 33 years, and has three children, now adults. He has no military service. (Item 5, e-QIP, dated April 21, 2014; Item 6, Response to Interrogatories, Testimony at 4-5) His Personal Financial Statement shows monthly income of approximately \$3,573, monthly expense of approximately \$3,286, leaving a net monthly remainder of approximately \$287. (Item 6 at 15)

The SOR lists, and credit reports (Item 7, dated June 3, 2013; and Item 8, dated September 13, 2013) confirm the following delinquent debts for Applicant: a federal highway utility tax for \$1,000 (SOR 1.a); a judgment for \$8,286 (SOR 1.b); a debt in collection for \$606 (SOR 1.c); a credit card charged-off for \$3,325 (SOR 1.d); a charged-off credit card account for \$3,866 (SOR 1.e); a charged-off veterinary debt for \$3,501 (SOR 1.f); a charged-off account for \$11,686 (SOR 1.g); and a vehicle repossession debt of \$18,928 (SOR 1.h). The credit reports show that his other debts are current and paid as agreed. The total delinquent debt is approximately \$51,198. Applicant admits the delinquent debts. (Item 4)

Applicant started to experience financial issues in 2007 when his mother-in-law was sick with no health insurance, and he had to pay approximately \$1,000 weekly for her medication. When both his in-laws passed away in late 2007, he had to pay their funeral expenses of approximately \$14,000. In June 2009, he started to have less business as a self-employed trucking driver and he could not pay his bills. At the time,

he had a truck, a utility trailer, and a pick-up truck for his business. His monthly payment on the vehicles was approximately \$3,100. He closed the self-employed business in February 2010, and his vehicles were repossessed. He also had debts from the business for a utility tax, truck repairs, and loans. He admits to a debt for the repossession of his truck but he disputes the amount of the debt. All of the debts except for the veterinary debt at SOR 1.f are from his self-employed trucking business.

He has not made a payment on the debts since June 2009. He admits the debts and stated he plans to pay all of the debts in full on the sale of his house. (Item 6 at 16-30, Real Estate Agent's contract, dated October 2, 2013) In his response to the FORM, Applicant again reiterated that he plans to pay all his debts from the sale of his property. He has reduced the asking price for the house to facilitate a quick sale. He also noted that his truck was sold after repossession, and the proceeds should have been applied to his debt. He is attempting to verify the sale price of the truck, and determine if the proceeds were applied to his debt. Also, the creditor for SOR 1.b stated they are satisfied to be paid in full on the sale of his property. (Response to FORM, dated May 19, 2014 at Financials and Amended Sales Agreement, dated May 17, 2014)

Applicant included letters of recommendation in his reply to the FORM. His employer stated he has known Applicant for over three years and considers him to have the highest ethical and moral character. He is honest, has integrity, and his personal standards are solid and above reproach. He recommends Applicant for eligibility for access to classified information. A fellow truck driver wrote that he has known Applicant for over seven years. Applicant is a family man who is always truthful, honest, and hard working. Another friend wrote that Applicant is a responsible person, dependable, trustworthy and honest.

Applicant's wife wrote that Applicant assisted her caring for her mother and father. She told of his willingness to pay for her mother's medications and the funeral expenses of her parents. Applicant's son wrote that Applicant established a strong family unit and his father holds the family together. Applicant's sister stated that Applicant is a loyal, honest, and hardworking family man. He is well respected in the community.

Applicant's pastor wrote that he has known Applicant for over 14 years and considers him to be trustworthy and reliable. He is dedicated to any task with a high level of loyalty and commitment. Another friend who has known Applicant for over 14 years stated he trusts Applicant without hesitation. Applicant is considered an upstanding person. An individual who Applicant befriended stated Applicant has great integrity and is extremely dedicated. (Item 9, Response to FORM, dated May 19, 2014)

### **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.

It is well-settled that 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 reports, the OPM interview, his response to the interrogatories, and his SOR response. Applicant's delinquent debts are a security concern. 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 an inability and not an unwillingness to pay delinquent debt.

I considered Financial Consideration Mitigating Condition 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 AG ¶ 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). I also considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 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 method of handling debts is needed. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. 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.

I also considered 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). Applicant did not present any information that he sought or received financial counseling, and his financial situation is not under control.

The mitigating conditions in AG ¶¶ 20(a), 20(b), and 20(d) do not apply. Applicant's debt is current and has not been resolved. He started to have delinquent debt in 2007 when he paid for his mother-in-law's medication and his in-law's funeral expenses. While these financial issues were beyond his control, he has not made any payments on his debts since 2009. He has not presented any information to establish that he made payments on his debts. Instead, he is waiting to sell his house and use the proceeds to pay his debts. This is not a systematic plan to resolve debt. It is only a hope that the house will be sold and that he has sufficient equity in the house to pay his delinquent debts. This was his intent when he answered the interrogatories in September 2013, and it is still his intent. Since he has not sold his house, he has not paid or resolved any of his delinquent debts. It is noted that his current bills seem to be paid as agreed. His previous debts that have not been resolved are of security concern.

The specific circumstances may not recur, but he will face other requirements for his finances in the future. He stated his intent to pay the debt but has not taken decisive action to pay his delinquent debts. He has no established payment plans, and he has not established a meaningful track record of debt payment. He stated he contacted his creditors, but he presented no information to establish any agreement with the creditors. His promise to pay debts in the future is not sufficient to show an adherence to his financial obligations. Since Appellant has not established that the delinquent debts listed in the SOR are being resolved, his lack of financial action does not show he acted in good faith with adherence to his financial obligations. He has not shown a "meaningful track record" of debt resolution. He has not established that he has or will act responsibly and reasonably to resolve his financial issues. 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. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations. 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. I considered the good character information Applicant provided from his employer, co-workers, friends, and family. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. 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
Subparagraphs 1.a -1.h:	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