



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



In the matter of: )  
)  
) ISCR Case No. 14-00112  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: Eric Eisen, Esq.

12/12/2014

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems were primarily caused by his and his wife's immaturity and inexperience in financial matters, and the downturn of the U.S. financial and real estate markets. Although he should have been more diligent addressing his financial problems, he resolved all of his delinquencies and his financial situation is under control. Considering the circumstances of this particular case, Applicant's past financial problem does not show he currently lacks judgment, reliability, or trustworthiness. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 10, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on March 4, 2014.<sup>1</sup>

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<sup>1</sup> The 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.

Applicant answered the SOR on March 28, 2014, and requested a hearing before an administrative judge. The Government was ready to proceed on August 27, 2014. Applicant was deployed overseas and requested his hearing be scheduled between September 22 and October 2, 2014. The case was assigned to me on August 28, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on August 29, 2014, scheduling a hearing for September 22, 2014.

At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified and presented exhibits (AE) 1 through 7. All exhibits and the documents attached to his answer to the SOR were admitted without objection and made part of the record. DOHA received the hearing transcript (Tr.) on October 2, 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all of the SOR factual allegations with explanations. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 32-year-old logistics coordinator employed by a defense contractor. He received his General Education Development (GED) and nurse assistance training certificates before he enlisted in the U.S. Army in 2002. He served in the Army from September 2002 to September 2005, when he was honorably discharged with the rank of specialist (E-4). After his discharge, he worked one year for a private company. He married his wife in December 2003, and they have a three-year-old daughter. His wife is a naturalized U.S. citizen, born in a Central American country.

Applicant has been working for government contractors since February 2006. He was hired by his current employer, a government contractor, in October 2012. Because of his duties providing support to deployed U.S. personnel, Applicant has worked and lived overseas for the greater part of every year since he started working for government contractors.

Applicant submitted his first SCA on July 10, 2013. In response to the financial questions (Section 25), he disclosed that he had financial problems, including a foreclosed mortgage and several delinquent financial accounts. The subsequent background investigation revealed the five smaller delinquent debts alleged in the SOR, totaling \$8,923, and a past-due mortgage in the amount of \$65,000, for a total of \$73,923.

Applicant acknowledged his debts and has taken responsibility for his actions. He explained that his delinquent debts were the result of his and his wife's immaturity and lack of financial knowledge. In 2006, he and his wife purchased a home for \$326,232, with an adjustable rate mortgage from 9 to 15 percent interest. They made the mortgage payments until 2008, when the real estate market conditions changed and his higher interest rates started. After that, he was financially unable to pay the mortgage and his family's day-to-day living expenses.

Applicant contacted the mortgage holder and attempted to refinance the loan, modify the mortgage, or do a short sale of the property. However, the mortgage holder refused to accept Applicant's offers. His wife started working part time in an effort to increase the family's income, but her employment was sporadic. Ultimately, Applicant was advised that his only remedy was to walk away from the mortgage and allow the foreclosure to take place.

Concerning the remaining delinquent debts, Applicant explained that he has been working overseas for extended periods of time since 2006. His wife took care of the family's finances while he was deployed. He credibly testified that he was not aware of any delinquent debts. He provided his wife most of his earnings, and he assumed that she was timely paying their debts.

Applicant became aware of the delinquent debts when he requested a credit report at about the same time he submitted his July 2013 SCA. Shortly thereafter, he requested information about the delinquent debts and tried to identify the legal creditors to resolve the debts. He testified that it was difficult for him to contact creditors and resolve his debts while working overseas. Although many of the debts were beyond the statute of limitations, Applicant contacted the creditors and paid the debts because he wanted to show financial responsibility. Applicant's documents reflect that between July 2013 and his hearing, he paid four debts alleged in the SOR (§§ 1.b-1.c, 1.e, and 1.f); and resolved SOR § 1.a (the state dismissed the tax lien).

Concerning the foreclosed mortgage, Applicant testified that the home was sold after the foreclosure. He contacted the mortgage holder and was informed that he did not have any outstanding deficiency or liens filed against him resulting from the foreclosure. Under state law, the mortgage holder had one year from the date the foreclosure certificate was issued to file any deficiency claims against Applicant, and none was filed.

Applicant expressed remorse for his financial situation. To avoid any future financial problems, he is now handling the household finances personally. He monitors his financial situation via applications that help him track his accounts and monitor his credit reports. He understands that he is required to maintain financial responsibility to be eligible for a security clearance.

Applicant has been successful at his job. He is considered a stellar performer. His references consider him to be honest, reliable, and trustworthy. He also received high marks for his work ethic and exceptional leadership skills.

Applicant appears to be in a solid financial situation. He is earning \$10,000 a month, and his wife is working part time. They have approximately \$3,000 of disposable monthly income after paying their expenses. A review of Applicant's credit reports shows that he is living within his financial means. There is no evidence of any additional delinquent debts. Applicant's financial problems are under control. He was candid and

upfront during the security clearance investigation process. He disclosed his financial problems in his 2013 SCA, and was forthcoming at his hearing.

## **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 list 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 and his wife purchased a house above their financial means. Because of their inexperience in financial and real estate matters, they purchased the house using an adjustable-rate mortgage under less than favorable terms. After two years, they were unable to continue making their mortgage payments and pay their debts and day-to-day living expenses. Because of the real estate and financial market downturns, he was unable to sell the house, refinance, modify the mortgage, or do a short sale of the house. Additionally, he accumulated five delinquent debts. Financial considerations disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

AG ¶ 20 lists 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.

Financial considerations mitigating conditions AG ¶¶ 20(a) through (e) apply in part. AG ¶ 20(a) has partial applicability because Applicant's financial problems are recent. However, I find that his financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and judgment. He has learned his lesson. He took control of his family finances, and he is monitoring his financial accounts.

AG ¶ 20(b) is partially applicable because the 2008 U.S. financial and real estate downturns were beyond Applicant's control. He maintained contact with the creditor and attempted to resolve his financial problem. Notwithstanding, he should have been more diligent monitoring and addressing his delinquent accounts. AG ¶¶ 20(c), (d), and (e) are partially applicable. There is no evidence he received financial counseling; however, he paid four of the debts alleged in the SOR after they may have become non-collectable, and he has no financial responsibility for the foreclosed mortgage. He resolved all his delinquent debts. Although Applicant had a legal basis to dispute the alleged debts, he paid them to show his financial responsibility.

Applicant appears to be in a solid financial situation. His income is sufficient for him to pay his debts and maintain financial responsibility. He is living within his means, and there is no evidence of any additional delinquent debts. Considering the evidence as a whole, I find that Applicant's financial problems occurred under circumstances unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and judgment.

### **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).

Applicant served in the Army three years and received an honorable discharge. He has worked for government contractors since 2006, and this is his first SCA. He is considered to be an excellent performer and valuable employee. Except for the SOR allegations, there is no other evidence of financial problems or any other security concerns. Applicant demonstrated financial responsibility handling the alleged debts. There is no evidence that he currently has a financial problem. He has learned a hard lesson and I find that his financial problems are unlikely to recur and do not show he currently lacks judgment, reliability, or trustworthiness.

### **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.f:

For Applicant

**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