



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



In the matter of:

	)	ISCR Case No. 14-02892
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

08/13/2015

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant did not present sufficient information to mitigate security concerns for financial considerations under Guideline F and criminal conduct under Guideline J. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 23, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on December 16, 2013, and February 5, 2014. (Item 3) 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 January 30, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and criminal conduct under Guideline J. (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 answered the SOR on March 3, 2015. He admitted the 19 allegations of criminal conduct under Guideline J. He also admitted the eight allegations of delinquent debt under guideline F. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on May 14, 2015. Applicant received a complete file of relevant material (FORM) on June 4, 2015, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned to case on August 4, 2015.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 6) 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 summary. Since Appellant did not respond to the FORM, he waived any objection to the admissibility of the Personal Subject Interview. I will consider information in the Personal Subject Interview in my decision.

### **Findings of Fact**

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

Applicant is a 35-year-old high school graduate, who has been an installation technician for a defense contractor since October 2013. He previously applied for access to classified information, but left the position with his sponsoring employer before the action was completed. He attended college from September 2010 until June 2012, but did not receive a degree. He married in September 2006 and has two children. Applicant served in the Navy inactive reserves from August 1997 until August 2005, when he received an honorable discharge. (Item 2, e-QIP, dated October 24, 2013)

Applicant admitted to 19 criminal offenses from 2002 until 2012. These offenses include three incidents of driving under the influence of alcohol, two other alcohol-related incidents, a failure to comply with an order for support, nine charges or convictions of driving on a restricted or suspended driver's license, and four charges of failure to appear in court or contempt of court. These criminal offenses are confirmed by a criminal history report of the Federal Bureau of Investigations and court records. (Items 4 and 5)

Applicant admitted most of the criminal offenses in his personal subject interview, and provided details of the incidents. He also acknowledged that he was unfamiliar with some incidents, so he could not provide detailed information.

The SOR lists, Applicant admits, and credit reports (Item 6, dated December 7, 2013; and Item 7, dated May 12, 2015) confirm the following delinquent debts for Applicant: a state tax lien for \$1,922 (SOR 2.a); three student loan accounts with the Department of Veteran's Affairs in collection for \$166 (SOR 2.b), \$2,860 (SOR 2.c), and \$2,649 (SOR 2.d); child support arrears for \$3,864 (SOR 2.e); a utility debt in collection for \$750 (SOR 2.f); another child support in arrears for a different state for \$16,177 (SOR 2.g); and a television service provider debt in collection for \$376 (SOR 2.h).

Applicant provided information to the investigator on the status of some of his debts. He agreed with the television service debt which occurred when his wife switched the name on the account. He stated he intended to pay this bill shortly after the interview in December 2013. He agreed with the information on the three student loan accounts and stated his intent to pay them in full. He agrees he is in arrears in child support payments, but believes the amount is approximately \$8,000. Applicant notes that his current financial situation could be better, and that he has debts because of unemployment. His financial situation is slowly getting better. (Item 3 at 8)

Other than his admissions, Applicant provided limited information in response to the SOR. He admitted driving with a restricted license in May 2010 because he was going to pick up a friend who was intoxicated. (SOR 1.e) He noted that an offense for contributing to the delinquency of a minor offense was dismissed. (SOR 1.q) While he admitted his debts, he responded to the SOR by writing that he was in the process of paying the utility debt at SOR 1.f. He was behind on this debt because he lost his job. He provided no additional information or documents in response to the FORM.

Applicant did not provide the details of any actions he has taken to resolve any of his delinquent debts, except to note that he is paying the utility debt. He has not indicated any inquiries about his debts to creditors, attempted to negotiate payment plans, or make payments on any of the debts.

### **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**

### **Criminal Conduct**

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature it calls into question a person’s ability or willingness to comply with laws, rules, and regulations (AG ¶ 30). Applicant was charged and/or convicted of 19 separate criminal offenses from 2002 until 2012. The offenses include three incidents of driving while intoxicated, other alcohol-related incidents, failure to pay child support, numerous offenses for driving on a restricted or suspended license, and court-related offenses such as failure to appear and contempt of court. Applicant’s criminal actions raise questions about his judgment, reliability, trustworthiness, and ability and willingness to comply with laws, rules, and regulations. The offenses raise the following Criminal Conduct Disqualifying Conditions under AG ¶ 31:

- (a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

I considered all of the mitigating conditions under criminal conduct, especially the following mitigating conditions under AG ¶ 32:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

None of the mitigating conditions apply. Applicant has a long, varied, and extensive criminal history starting in 2002. There is no evidence of unusual circumstances leading to any of the criminal offenses. Some of the offenses, such as driving on a restricted license, failures to appear, and contempt of court, directly question Applicant's reliability, trustworthiness, and good judgment. There is sufficient evidence to show that Applicant committed the offenses. While the last criminal offense took place over three years ago, the time is not sufficient to overcome his almost ten years of continued criminal conduct. There is no evidence of remorse, restitution, or positive community involvement. There is no evidence of rehabilitation. His criminal conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant has not mitigated security concerns for criminal conduct.

## **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 credit reports, and is supported by his admissions to the allegations in the SOR and in the personal subject interview. 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.

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 substantial the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. There is no indication that his financial circumstances are unusual or caused by conditions beyond his control. Applicant has not shown any actions he has taken to resolve his financial problems. The debts have not been paid, and Applicant has not established a plan to pay the debts. He has not shown that he received financial advice or counseling and that the financial issues are resolved or under control.

Applicant has not presented a reasonable plan to assume responsibility for and resolve his financial problems. 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.

### **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 Applicant's service in the Navy reserves and his honorable discharge. Applicant admits a history of numerous and varied criminal offenses. He has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. 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 and criminal conduct.

### **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 J:	AGAINST APPLICANT
Subparagraphs 1.a –1.s:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a - 2.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