



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



In the matter of: )  
)  
) ISCR Case No. 14-01277  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

06/02/2015  
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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Notwithstanding his recent bankruptcy that discharged all the Statement of Reasons (SOR) debts, Applicant’s evidence is insufficient to establish that he has a track record of financial responsibility and that his financial problems are unlikely to recur. He failed to mitigate the Guideline F security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 5, 2013. On May 19, 2014, the Department of Defense (DOD) issued Applicant an SOR alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on June 9, 2014, and elected to have his case decided on the written record.

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<sup>1</sup> 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.

A copy of the Government's file of relevant material (FORM), dated February 11, 2015, was provided to him by transmittal letter dated February 12, 2015. Applicant received the FORM on March 3, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant timely submitted a response, consisting of two pages showing that a U.S. Bankruptcy Court discharged him of all dischargeable debts pursuant to a Chapter 7 bankruptcy proceeding on June 30, 2014. The documents, and Department Counsel's statement indicating he did not object to me considering the documents, were marked Appellate Exhibit 1, and made part of the record.

### **Procedural and Evidentiary Issues**

The SOR allegations, and Applicant's response to the SOR, did not follow the correct alphabetical order. The SOR is not signed and its allegations jump from ¶¶ 1.b to 1.e - skipping ¶¶ 1.c and 1.d. Applicant's response to the SOR skipped ¶ 1.g.

The SOR alleges seven delinquent accounts. Applicant admitted to eight allegations, stating the same comment, that he filed for Chapter 7 bankruptcy protection and the case was pending. I disregarded all the SOR paragraph identification markings and considered all allegations admitted.

In the FORM, the Government offered as evidence a summary of Applicant's interview (PSI) with an Office of Personnel Management (OPM) investigator conducted on January 15, 2014. (Item 4) The Government noted that Item 4 had not been authenticated by Applicant, and acknowledged that the document was subject to an objection to its admissibility on that ground. (Directive, Enclosure 3, ¶ E3.1.20 (An ROI may be received with an authenticating witness provided it is otherwise admissible . . . . )) The Government invited Applicant to correct, add, revise, delete, or update the information in Item 4, or to object to its admissibility in its entirety. (Footnote 1, pg. 2)

Applicant acknowledged receipt of the FORM on March 3, 2015, and submitted a response to the FORM. I presume Applicant read the FORM and elected not to submit an objection to the FORM or to the admissibility of Item 4. When evidence is submitted in a case, an Applicant is expected to object to the evidence, if there is a reason to do so. As a general statement of the law, failure to object to consideration of evidence results in waiver. There is no requirement that Department Counsel discuss the benefits or merits of making a rights' election.

I will presume Applicant relied upon the Government's inclusion of his PSI (Item 4) in the record, and he wanted that evidence considered, and chose not to repeat facts contained in his PSI in his FORM response. (Section VII of the FORM states that if "you do not file any objections, or submit any additional information . . . the case will be assigned to an administrative judge for a determination based solely on the FORM.")

The Government's footnote provided Applicant with sufficient knowledge of his right to object to the admissibility of Item 4. Applicant received notice that his failure to

correct Item 4 (the equivalent of certifying or authenticating the document), or to object to Item 4, could be considered a waiver of his right to object. The Supreme Court has explained that “waiver is the ‘intentional relinquishment or abandonment of a known right.’ *Kontrick v. Ryan*, 540 U.S. 443, 458, n. 13 (2004) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)).

Applicant may have been better “informed” if Department Counsel’s advice in the FORM had included a comment that if Applicant objects to consideration of his PSI, it will not be accepted as evidence in his case; that if he does not object the PSI will be considered as evidence; and that Applicant’s failure to respond to the FORM could be considered a waiver of his right to object, and that his waiver would then allow an administrative judge to consider the document on its face. Considering the circumstances in this particular case, the evidence is sufficient for me to conclude that Applicant knowingly waived his right to object. Accordingly, Item 4 was admitted as evidence and will be considered.

### **Findings of Fact**

Applicant admitted all the SOR factual allegations, with explanations. His admissions are incorporated as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 44-year-old security officer (guard) employed by a government contractor. He graduated from high school in October 2000, and started working as a security officer that same year. He was employed full time for several companies until July 2007, when he was unemployed for a month. He was employed and worked full time between August 2007 and April 2009. In April 2009, he resigned his job and was unemployed until June 2009, because he believed the work conditions were not safe. Applicant has been working for his current employer, a government contractor since June 2009.

Applicant averred that he possessed a top secret security clearance in 2003, and a secret-level clearance in 2009, both incidental to his security officer jobs. Applicant has never been married, and he has no children. He has lived with his parents since 1987.

Applicant disclosed in Section 26 (Financial History) of the 2013 SCA that he had financial problems and revealed one delinquent credit card account. (SOR ¶ 1.h) He stated in his 2013 SCA: “I got behind in paying my bills. I am the only one working at my household. I had a history of unemployment periods. I take care of my elderly mother and one sister. I pay for most of the household expenses.” He also stated that his sister suffered from a medical condition, and was unemployed.

Applicant further stated that a collection company was threatening legal action to collect the debt. He acknowledged that with his current income he would not be able to bring his debts current. He averred that he was actively trying to negotiate payments on

some of his debts, and expressed his intent to pay his debts. He claimed that he was seeking a second job to generate additional income to pay his debts.

The subsequent background investigation and a December 2013 credit report (Item 5), disclosed the seven delinquent accounts alleged in the SOR, totaling approximately \$37,000. The credit report, and Applicant's response to the SOR, established that the alleged SOR debts were Applicant's delinquent accounts. All of the delinquent debts involved credit cards, revolving charge accounts, and consumer accounts that became delinquent around 2011 - 2012.

Applicant submitted documentary evidence showing that a U.S. Bankruptcy Court discharged him of all dischargeable debts pursuant to a Chapter 7 bankruptcy proceeding on June 30, 2014. (Appellate Exhibit 1) Applicant was released of legal liability for any of the SOR debts.

Except for the comments provided in his 2013 SCA, Applicant provided little information about when he acquired the debts, why they became delinquent, what efforts he took, short of filing for bankruptcy in 2014, to stay in contact with his creditors and to pay his delinquent debts. In his 2013 SCA, Applicant alluded to his periods of unemployment, that he is the sole provider for his household (which includes is elderly mother and unemployed sister), and to not having sufficient income to pay for his day-to-day living expenses and his delinquent debts.

Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, his monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and his debts. Applicant participated in counseling as a result of his bankruptcy filing. He provided no information to indicate whether he follows a budget.

### **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 admitted (seven debts), and the credit report established all the delinquent debts alleged in the SOR. AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations," apply.

AG ¶ 20 lists five 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 condition AG ¶ 20(a) does not fully apply. Applicant presented little information to show that his financial problems were resolved by his bankruptcy discharge and are unlikely to recur. He stated in his 2013 SCA that he did not have sufficient income to meet his living expenses. There is no evidence to show that his income has increased, or that he has changed his spending habits. Additionally, he did not present sufficient evidence to show that his financial problems occurred under unusual circumstances and are unlikely to recur.

AG ¶ 20(b) partially applies, but does not fully mitigate the financial considerations security concerns. Applicant's financial problems could have been, in part, aggravated or caused by circumstances beyond his control – his periods of unemployment (one month in 2007, and three months in 2009) and having to provide support for his mother and sister. However, Applicant presented little evidence to explain the circumstances that led him to accumulate \$37,000 in consumer debt; how his two short periods of unemployment prevented him from addressing his delinquent debts from the day he acquired them to when they were released by the bankruptcy; and what efforts he took to resolve his debts short of the bankruptcy filing.

In sum, Applicant failed to present sufficient evidence to show that he acted responsibly under the circumstances, and that he made a good-faith effort to repay overdue creditors. He presented little documentary evidence of payments made, contacts with creditors, or of efforts to otherwise resolve any of the delinquent SOR debts, short of filing for bankruptcy.

I considered that Applicant received financial counseling pursuant to the bankruptcy proceeding, and that all of his dischargeable debts were discharged. Notwithstanding, Applicant failed to present sufficient evidence to establish that the underlying reasons for his financial problems are resolved and are unlikely to recur. AG ¶ 20(c) does not apply. The remaining mitigating conditions are not applicable to the facts in this case.

Furthermore, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to show that he follows a budget. He presented no information about any lifestyle changes or about what income or spending changes he has made to prevent future financial problems. The available information is insufficient to establish clear indications that his financial problems are under control.

### **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). I have incorporated my comments under Guideline F in my whole-person analysis.

Notwithstanding his recent bankruptcy discharge of the debts alleged in the SOR, Applicant failed to submit sufficient evidence to establish a track record of financial responsibility, and that his financial problems are unlikely to recur. He failed to mitigate the Guideline F security concerns.

### **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.b, 1.e-1.i:<br>(1.c and 1.d were not used) | Against Applicant |

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge