



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
)  
)  
Applicant for Security Clearance )

ISCR Case No. 14-01508

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2014

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

**Statement of the Case**

On February 23, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated June 27, 2014, detailing security concerns for financial considerations under Guideline F. 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 July 22, 2014. He admitted six and denied six of the 12 allegations of delinquent debt. Department Counsel was prepared to proceed on September 23, 2014, and the case was assigned to me on September 29, 2014. DOD issued a Notice of Hearing on October 24, 2014, scheduling a hearing for November 20, 2014. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified and offered ten exhibits that I marked and admitted into the record without objection as App. Ex. A through J. I kept the record open for Applicant to submit additional documents. Applicant timely submitted seven documents. Department Counsel had no objection to the admission of the documents. (GX 6, e-mail, dated December 10, 2014) I marked and admitted the documents into the record as AX K through Q. I received the transcript of the hearing (Tr.) on December 4, 2014.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 53 years old. He served on active duty in the Air Force for 20 years retiring with an honorable discharge as a master sergeant (E-7) in 2002. He is a college graduate with extensive post-graduate education. He is married but separated from his wife in 2002. He has two sons age 22 and 14. He provides child support for them. He is now employed as a security specialist for a defense contractor. He was cleared for eligibility for access to classified information while on active duty. His net monthly pay is approximately \$3,000, with another \$1,400 in monthly retired pay for a total monthly income of \$4,400. His monthly expenses are approximately \$3,500 to \$3,600, leaving \$700 to \$800 in monthly discretionary funds. Most of his discretionary funds are used to pay for his continuing education. (Tr. 10-12, 51-56; GX 1, e-QIP, dated February 22, 2013)

The SOR alleges, credit reports (GX 4, dated March 6, 2013; GX 5, dated April 26, 2014) confirm, and Applicant admits (GX 2, Interview, dated July 26, 2013) the following delinquent debts: \$155 in collection for a rental agency (SOR 1.a); \$348 in collection for a cable company (SOR 1.b); \$3,946 in collection by Midland for a bank (SOR 1.c); \$1,220 in collection by Midland for a phone company (SOR 1.d); \$9,400 in collection by a bank for a credit card (SOR 1.e); \$8,642 charged off by a bank (SOR 1.f); \$4,973 on a credit card in collection (SOR 1.h); \$1,411 on a phone account for in collection (SOR 1.i); \$1,284 on a credit card in collection (SOR 1.j); \$1,196 for another phone account in collection (SOR 1.k); and \$4,072 on student loans in collection by a state agency (SOR 1.l). The total amount of the delinquent debt is approximately \$38,000. Applicant employs a credit education company to advise him and assist him in resolving credit issues. (Tr. 36-37: AX G, Letter, July 18, 2014)

When Applicant retired from the Air Force in 2002, he purchased a house for \$200,000. The day he signed for the house, his wife left him. He then had the mortgage and the household bills to pay with only his salary. At the time, he was working as a

human resource associate for the local school system. In June 2007, he decided to take a position as a computer forensic technician in Iraq for a defense contractor. He served in Iraq from June 2007 until August 2010. He had a cousin living in his house while he was stationed in Iraq. He sent the cousin funds each month to pay the expenses for the house. He was told that the expenses were being paid, and he never received any information that the expenses were not being paid. When he returned home in 2010, he was employed by his present defense contractor employer. (Tr. 17-18, 46-48)

He was cleared for access to classified information while employed in Iraq and after returning home. In early 2013, he submitted his e-QIP for a periodic update of his access to classified information. He listed some debts on the form. However, when interviewed by the OPM investigator, he learned of other debts that he believed had been paid while he was in Iraq. After learning of the debts, Applicant commenced contacting creditors. He paid, settled, or resolved some debts and established payment plans for other debts. On some debts, the creditors could not provide Applicant sufficient information to resolve the issue. (Tr. 19-20; AX A, Letter, undated)

Applicant presented sufficient information to establish that he paid the rental agency debt at SOR 1.a. (Tr. 19-20 AX B, receipt dated March 28, 2014), and the cable company debt at SOR 1.b (Tr. 20-21; AX K, letter, dated December 4, 2014; AX L, paid in full letter, dated November 21, 2014). The three debts for the collection agency at SOR 1.c, 1.e, and 1.f were consolidated and settled for \$1,544. Applicant paid the settlement amount. (Tr. 21-23, 26-29; AX N, letter, dated November 20, 2014)

The phone debt at SOR 1.d is for his college-age son's phone that Applicant co-signed. His son did not pay his bills, so Applicant is responsible for the debt. Applicant negotiated a payment plan for the debt of \$50 a month. He is making payments under the plan. (Tr. 24-26; AX C, payment plan letter, dated November 7, 2014; AX P, check, dated November 22, 2014)

The debt at SOR 1.g was for a credit card Applicant thought was paid while he was in Iraq from the funds he sent home. After learning of the debt on his credit report, he contacted the creditor to inquire about the status of the debt and make payment arrangements. Instead, the creditor closed the account indicating that there was no balance due. (TR. 29-30; AX D, letter, dated October 15, 2014)

Applicant did not have any information on the \$4,973 debt at SOR 1.h so he contacted the creditor for information. The creditor did not have information on a debt for that amount but had a furniture debt for \$2,449.86. Applicant settled the debt for two monthly payments of \$1,224.93. The first payment has been made. (Tr. 30-31; AX E, settlement letter, dated November 7, 2014; AX Q, bank statement dated December 3, 2014)

SOR debt 1.k is part of the debt at SOR 1.i. Applicant contacted the collection agency listed for the phone debt at SOR 1.i. The settlement company told them that the debt was returned to the original creditor. He contacted the original creditor but they

have no information on the debt. The collection agency notified him that no collection actions are ongoing. (TR. 31-32; AX F, letter, dated November 6, 2014)

Applicant has no information on the credit card debt at SOR 1.j. He asked his wife about the debt but she had no information. The collection agency did not respond to his request for information. He will continue to seek information on the debt. (Tr. 32-33)

The debt at SOR 1.i is a student loan for Applicant's schooling. He has a payment plan for the loan and is making payments on the debt. (Tr. 33-34; AX O, check, dated November 22, 2014)

Applicant also noted he paid a jewelry store debt in full that is not listed on the SOR. He had two judgments against him for failure to pay the homeowners assessment on his house while he was in Iraq. He sent funds to his tenant to make the payments but the payments were not made. Applicant paid both judgments. (Tr. 41-42; AX J, letters, dated December 3, 2013)

Applicant is current with his child support payments. The funds are paid directly from his pay. (Tr. 41, AX I, account statement, dated November 18, 2014)

Applicant presented his latest credit report. It shows that most of his bills are current. (Tr. 39-41; AX H, credit report, dated June 11, 2014)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant incurred debts after he and his wife separated. He worked in Iraq for over two years. He sent funds home to pay household debts but they were not paid. He did not learn of the debts until he was involved in the security clearance process. The delinquent debts, as established by Applicant’s statements and credit reports, raise 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 evidence indicates a history of an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions 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 provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

These mitigating conditions apply. Applicant encountered financial issues after he and his wife separated and he was left to cover the expense associated with a new house on his salary. These are unusual circumstances not likely to recur and were beyond his control. Applicant acted responsibly by taking a position in Iraq to earn sufficient income to cover expenses and sending funds home to pay debts. After learning that he had delinquent debts because payments he thought were made had not been made, he contacted all of the creditors, settled and paid some debts, and negotiated payment plans. He employed a credit education company to help him understand his credit report and advise him on an appropriate course of action. He disputed debts he did not understand with the credit or collection agencies. AG ¶¶ 20(a), (b), (c), and (e) apply.

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. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. 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. Applicant paid or resolved eight of the debts, has payment plans on three other debts, and contacted the creditor and collection agency on the remaining debt but has not received sufficient information from them to resolve the debt. Applicant has shown his good-faith effort to resolve the debts and his actions are a reasonable, prudent, honest, adherence to his financial obligations and duties. He established a meaningful track record of debt payment. AG ¶ 20(d) applies.

Applicant has shown that he manages his personal financial obligations reasonably and responsibly, and his responsible financial conduct is likely to continue. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a security clearance 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. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances. His financial track record establishes confidence in the responsible management of his financial obligations. This indicates he will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has

mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

### **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.l: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

THOMAS M. CREAN  
Administrative Judge