



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



In the matter of:

|                                  |   |                        |
|----------------------------------|---|------------------------|
|                                  | ) | ISCR Case No. 14-01945 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2015

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**Decision**

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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 October 4, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for his employment with a defense contractor (Item 5). After receiving an investigation conducted by the Office of Personnel Management (Item 6), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 26, 2014, 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 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 received the SOR on July 9, 2014 (Item 3). He answered the SOR on July 21, 2014, admitting the three allegations of delinquent debt under Guideline F with explanation. He elected to have the matter decided on the written record (Item 4). Department Counsel submitted the Government's written case on November 25, 2014. Applicant received a complete file of relevant material (FORM) on January 7, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the allegations. He did not submit any additional information. I was assigned to case on March 24, 2015.

### **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 has been employed as a senior intelligence analyst for various defense contractors since 2002. He served on active duty in the U.S. Army from September 1980 until his retirement with a honorable discharge in December 2000. Applicant has been eligible for access to classified information continuously since 1980. He is divorced with two adult children. (Item 5, e-QIP, dated October 4, 2013)

The SOR alleges, and Applicant's testimony at his personal subject interview (Item 6, dated February 12, 2014) and credit reports (Item 7, dated November 15, 2013, and Item 8, dated November 21, 2014) confirm the following delinquent credit card debts for Applicant. They are a charged off debt for \$20,223 (SOR 1.a), a debt in collection for \$16,482 (SOR 1.b), and a debt in collection for \$9,853 (SOR 1.c). The total amount of the delinquent debt is approximately \$46,500. (Item 4)

Applicant did not provide an explanation for how he accumulated the credit card debts. In his response to the SOR, he admits the debts and stated that he is disputing the debts. Attached to Applicant's response to the SOR are letters prepared by his attorney in October 2011 to the creditors and the credit reporting agencies disputing the debts and noting that he is acting under the Fair Credit Billing Act. The letters indicate that Applicant is disputing the amount of the debts and not the validity of the debts. This position is consistent with Applicant's admission of the debts. (Letters, dated October 10, 2011) There is no information provided by Applicant to show any further action, correspondence, or discussion with the creditors after October 2011. There is a letter from the attorney addressed "To Whom It May Concern", stating that as long as the accounts are in dispute and unsettled, the only action that can be taken by the creditors is to note that the accounts are in dispute. The letters also state that Applicant deliberately is choosing to neglect his debts because he disputes the amount of the debts. (Letter, dated July 15, 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. There are three delinquent debts alleged. Applicant's history of delinquent debts is documented in his credit reports, the OPM interview, 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 both an inability and an unwillingness to pay delinquent 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 substantial the basis of the dispute or provides evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's debt is current and has not been resolved. He did not provide an explanation for why he is disputing the debts, so there is no information to establish that the debts occurred under unusual circumstances, are not likely to recur, or caused by problems beyond Applicant's control. Applicant did not present any information that he sought or received financial counseling, or that his financial situation is under control.

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.

Applicant has not articulated a plan to pay the debts. He has not presented information that he made any payments on his debts. Applicant's sole action is disputing the debts under the Fair Credit Billing Act, but he does not provide an explanation for the dispute. This process may be sufficient to stay the actual payment of the debts, but to be granted a security clearance, Applicant has to establish that he is acting reasonably, prudently, and with an adherence to his financial duties. He has not provide sufficient information to establish that he is acting reasonably and responsible towards his finances. He provided information that he disputed the debts in October 2011 but he has not shown that he has taken any action on his delinquent debts since then. There is insufficient information to establish that he has a reasonable basis to dispute the debts. It is also noted that he does not dispute that he owes the debts but just the amount of the debts.

Applicant's promise to pay the debts in the future is not sufficient to show an adherence to his financial obligations. Applicant has not established that he is taking reasonable and responsible action to resolve the delinquent debts listed in the SOR. His lack of financial action shows he is not acting in good-faith with adherence to his financial obligations. He did not provide evidence that he has made any payments on the debts or taken any actions since the 2011 letters from his attorney. There is no "meaningful track record" of debt resolution. Without documentation to support responsible management of his finances and payment of the delinquent debts, Applicant financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. 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 that Applicant served 20 years on active duty in the Army and retired with an honorable discharge. I also considered that he has been eligible for access to classified information since 1980. However, Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. He 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.c:   | 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