



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



In the matter of:

	)	ISCR Case No. 14-04164
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

06/03/2015

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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 did not provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. Applicant mitigated personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 24, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on June 13, 2013. (Item 5, at 3-5) After reviewing the results of the interview, the Department of Defense (DOD) sent Applicant financial interrogatories. (Item 5 at 6-9) After reviewing the results of the OPM investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. On October 20, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under

Guideline E. (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 November 10, 2014. He admitted the eight allegations of delinquent debt under Guideline F. He indicated the debts were incurred from his divorce, he was unaware of the debts, and it would take time to resolve the debts. He did not respond to the personal conduct allegations. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on March 3, 2015. Applicant received a complete file of relevant material (FORM) on April 7, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide additional information in response to the FORM. I was assigned to case on May 19, 2015.

### **Findings of Fact**

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

Applicant is 51 years old and has been employed as a pipe fitter by a defense contractor since April 2013. He married in June 1989, and divorced in August 2006. He has four children. He has not served in the military. (Item 4, e-QIP, dated April 24, 2013)

The SOR lists, and credit reports (Item 6, dated May 19, 2014; Item 7, dated April 30, 2013) confirm the following delinquent debts for Applicant: a telephone debt in collection for \$1,497 (SOR 1.a); a judgment for a collection company for \$3,831 (SOR 1.b); a past due debt of \$3,156 on a balance of \$9,149 (SOR 1.c); a collection account for \$5,782 (SOR 1.d); a credit card charged off for \$2,272 (SOR 1.e); and a medical account in collection for \$2,021 (SOR 1.f); a utility bill in collection for \$406 (SOR 1.g); and another utility debt in collection for \$405 (SOR 1.h). The total delinquent debt is approximately \$19,000.

Applicant attributes his financial problems to his divorce in 2006. Applicant told the OPM investigator that he was unaware of many of the delinquent accounts. (SOR 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, and 1.h) He thought the accounts were joint accounts with his wife when they were married. He believed from the divorce decree that the accounts were to be closed and opened separately under his wife's name only. He believed the account at SOR 1.c was a car loan for the car his wife received in the divorce and was to be her responsibility to pay. He informed the OPM investigator that he would research the accounts and his divorce decree to determine his liability for the debts. If the debts are his former wife's sole responsibility, he will seek legal action to have his former wife assume her responsibility for the debts. If he is responsible, he will make payment arrangements. (Item 5 at 4) In his response to the interrogatories, Applicant

did not list any actions on the debts that he has taken since the OPM interview. (Item 5 at 7, question 3) On his interrogatory response, he checked the item that none of the debts have been paid. (Item 5 at 8) Applicant has not presented any documentation to establish payments on any of the debts.

Applicant did not list any derogatory financial information on his security clearance application. Applicant told the OPM investigator that he was not aware of any of the debts and did not intentionally omit any delinquent financial information. (Item 5 at 4)

### **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.

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 his credit report, the OPM interview, his responses to financial interrogatories, 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 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 substantiate 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. Applicant did not indicate any unusual circumstances or conditions beyond his control that caused the debts. The debts have not been paid and Applicant has not established that he has a plan to pay the debts. He told the OPM investigator that he would research the debts and the divorce decree to ensure the debts were his wife's sole responsibility. He presented no information on the results of his research. Applicant has not shown that he acted reasonably and responsibly under the circumstances to learn about the debts and try to resolve the financial issues. He has not shown that he received financial advice or counseling and that the financial issues are resolved or under control. He merely blames the delinquent debts on his former wife who supposedly is responsible for the debts under their divorce decree. He presented no information to verify his statement on her responsibility.

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.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for

access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

On his e-QIP, Applicant provided no derogatory financial information on his security clearance application. As noted in the SOR and the credit reports, Applicant had delinquent debts. His failure to list his delinquent debts raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentional falsification for failing to list any delinquent debts on his security clearance application. He told the OPM investigator that he was unaware of the debts and believed that they are his wife's responsibility under their divorce decree. While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. It is credible that Applicant did not know he had delinquent debt as result of his divorce. I find Applicant did not deliberately fail to provide correct and accurate financial information on the security clearance application. I find for Applicant as to personal conduct.

### **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. Applicant did not know he had delinquent debt as a result of his divorce, but he was made aware of the debt when he was questioned by the OPM investigator. He agreed to research the debts and determine his liability for them. He presented no evidence of any action he has taken after learning in the OPM interview to resolve the debts. He has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. He established that he did not provide false information on his security clearance application. 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. He mitigated the personal conduct 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.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a – 2.b:	For 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