



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



In the matter of:

	)	ISCR Case No. 14-04623
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

08/13/2015

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on March 5, 2014. (Item 6) 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 October 28, 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 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 November 9, 2014. He admitted the 13 allegations of delinquent debt and the one allegation of filing a bankruptcy petition. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on March 2, 2015. Applicant received a complete file of relevant material (FORM) on May 11, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a reply to the FORM. I was assigned to case on August 3, 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 Personnel Subject Interview summary. Applicant did not respond to the FORM, so he waived any object to the admissibility of the Personal Subject Interview summary. 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 51 years old. He received an associate's degree in 1987, and is a journeyman electrician. He is waiting for employment with a DOD contractor as an electrician at a U.S. embassy in the Middle East. He is employed with a civilian company in the United States while waiting for his clearance so that he can assume his assignment with the DOD contractor. Previously, he worked as a journeyman electrician both in the United States and overseas. He worked as an electrician for a DOD contractor in the Middle East from October 2007 until April 2013. Prior to that employment, he worked as an electrician in the United States from at least May 2002 until October 2007. Applicant has been married since July 1996, and has four children or step-children. (Item 3, e-QIP, dated October 27, 2013; Item 6, Personal Subject Interview, dated March 5, 2014)

The SOR lists, and credit reports (Item 4, dated March 1, 2014, and Item 5, dated December 6, 2013) confirm the following delinquent debts for Applicant: three judgments for unpaid rent of \$3,200 (SOR 1.a), \$1,844 (SOR 1.b), and \$4,891 (SOR

1.l); a debt in collection for \$40 (SOR 1.c); a debt in collection for \$631 (SOR 1.d); a cable company debt in collection for \$753 (SOR 1.e); a credit card debt in collection for \$265 (SOR 1.f); medical debts in collection for \$102 (SOR 1.g), \$141 (SOR 1.h), \$45 (SOR 1.i), \$35 (SOR 1.j), and \$283 (SOR 1.m); and a car repossession debt for \$27,916 (SOR 1.k). Also included on the SOR is a Chapter 13 bankruptcy filing in October 2006 which was dismissed in September 2009 for failure to make the required payments. (SOR 1.n)

Applicant informed the OPM agent in the Personal Subject Interview that he was the sole source of income for his family. Applicant did not know much of his financial information because his wife manages the family finances and takes care of the bills and payments. His wife filled in the financial information on his e-QIP with his permission. He tried to obtain some information but his wife is not cooperating with him to obtain the information. Some of the information is in storage. He stated that his financial status is poor and he owes debts. He has not checked his credit reports and he is unaware of many of his debts. He stated he received credit counseling in 2007 to 2009. Applicant was unable to provide detailed information on history and status of the bankruptcy filed in 2006. (Item 6 at 8)

In his response to the SOR, Applicant stated he is not opposed to making payment arrangements or paying off the smaller debts. He was unable to make payments on his debts because he is the only source of income for the family. His wife and daughter cannot work for unknown medical reasons. He applied to work overseas to have more funds to pay bills and make ends meet. He has financial struggles but he is not a threat to society. He is just a hard worker with financial problems.(Item 3)

Applicant did not provide any information on any actions taken to resolve any of his delinquent debts, except to note that he does not have sufficient income to pay his delinquent debts. Applicant has not indicated he inquired about his debts with the 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**

### **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 and his admission to the allegations in the SOR. 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. Applicant did not resolve his delinquent debts because, as he stated, he is the sole income earner for the family. It is not unusual for a household to have only one income so there is no indication that his circumstances are unusual or are conditions beyond his control. Applicant has not shown any actions taken to resolve his financial problems, to include attempts to live within the limits of his salary. The debts have not been paid and Applicant has not established a plan to pay the debts. He stated he received financial advice or counseling in 2007 and 2009, but that was many years ago and the financial issues are not resolved or under control. His sole financial action is to blame the delinquent debts on having only one source of income in the family. Even though bankruptcy is a legal and legitimate means of resolving debt, he did not fulfill the requirements of the Chapter

13 bankruptcy and the petition was dismissed. The debts were not resolved. The filing of bankruptcy under these circumstances remains a security concern.

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. Applicant presented no evidence of any action he has taken to resolve his delinquent 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. 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.

### **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.n:                      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.

---

THOMAS M. CREAN  
Administrative Judge