



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ) ISCR Case No. 15-01247  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/09/2016

**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 and personal conduct security concerns.

**Statement of the Case**

On March 3, 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 May 16, 2015, detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. 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 June 5, 2015. He admitted the nine delinquent debts, and denied the personal conduct allegation based on falsification of his security clearance application. Department Counsel was prepared to proceed on June 29, 2015, and the case was assigned to me on August 31, 2015. A notice of hearing was sent to Applicant on October 23, 2015, scheduling a hearing for November 4, 2015. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 4. Applicant testified, and submitted one exhibit that I marked and admitted into the record without objection as Applicant Exhibit (AX) A. I kept the record open for Applicant to submit additional documents. Applicant timely submitted four documents that I marked and admitted into the record as AX B through AX E. Department Counsel did not object to the admission of the additional documents. (GX 5, e-mail, dated November 30, 2015). I received the transcript of the hearing (Tr.) on November 13, 2015. The record closed on November 30, 2015, on receipt of Applicant's post-hearing submissions.

### **Findings of Fact**

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

Applicant is 36 years old and has been employed as a diver for a defense contractor since January 2015. Applicant served on active duty in the Navy as a diver from January 2000 until October 2008, when he received an honorable discharge as a first class petty officer (E-6), and he was placed on the Temporarily Disabled Retired List (TDRL). Applicant married in February 2009 and has two small children. (Tr. 16-19; GX 1, e-QIP, dated March 25, 2013)

The SOR alleges and credit reports (GX 3, dated April 13, 2013; GX 4, dated January 23, 2014) confirm the following delinquent debts for Applicant: a charged off debt on a credit union credit card for \$15,628 (SOR 1.a); a judgment by a department store for \$8,268 (SOR 1.b); a charged off credit card for \$1,604 (SOR 1.c); an account placed for collection for \$720 (SOR 1.d); a cable debt in collection for \$284 (SOR 1.e); medical debts in collection for \$163 (SOR 1.f), \$143 (SOR 1.g), and \$72 (SOR 1.h); and a medical debt in judgment for \$192 (SOR 1.i). The amount of the delinquent debt is approximately \$27,000.

After his discharge from the Navy in 2008, Applicant had periods of unemployment. He was unemployed from October 2008 until February 2009, but worked odd jobs for which he received some income. He did not receive unemployment compensation. He was employed fulltime by a defense contractor as a diver from March 2009 until August 2010 at a salary of \$55,000 annually. In August 2010, he switched employment to another defense contractor as a senior diving and salvage instructor at an annual salary of \$72,000. His company lost the contract he was working under and he was unemployed from September 2011 until March 2013. He drew unemployment compensation of \$300 monthly for about eight months of this unemployment. In April 2013, he found employment as a carpenter with a private company until October 2013

when he was laid off. He was employed as a diver from October 2013 until January 2015 with a defense contractor on an as needed basis. He was rarely needed during this time as the company's diving program was not functional, so he had limited income during this time. He started working with his present defense contractor employer fulltime in January 2015. (Tr. 18-20, 21-23; GX 1, e-QIP, dated March 25, 2013)

During some of the periods of unemployment, Applicant's wife was employed as a speech pathologist on an as needed basis. Her income, when working, was approximately \$55,000 annually. His wife also had periods of unemployment basically because of maternity leave. At the time of the hearing, she was on maternity leave but expected to return to work in early 2016. Applicant's present monthly net income, including disability, is approximately \$4,200. His net monthly expenses are approximately \$4,200, so he has limited discretionary funds. He states that he is living paycheck to paycheck. When his wife returns to work from maternity leave in early 2016, the family will have significantly more funds to apply to resolve debts. Applicant noted that when he has been employed since being discharged from the Navy, he was current on his debts. Since he started his latest employment in January 2015, he has been current with all of his current bills. He has been able to make some payments on his past-due obligations. (Tr. 16-17, 20-21, 38-44)

The delinquent debt to a credit union at SOR 1.a is for a credit card opened by Applicant in 2010 to consolidate other credit card debts to obtain a lower interest rate and for medical debts. He also used the card to purchase items needed for daily living. The two credit cards that he consolidated were also used to purchase daily living items such as groceries. When he first opened the account, his monthly required payments were approximately \$300, but he usually made larger payments. When he lost his employment, he could only afford to pay his mortgage, buy groceries, and purchase other necessities. His monthly mortgage payments alone were \$2,100. He was unable to make payments on his other debts. He stopped using this credit card, and eventually the credit union charged off the account. When he started his new position in January 2015, he contacted the credit union and agreed to start making payments on the debt in January 2015. Applicant presented a post-hearing document to verify a \$200 payment in November 2015 to the creditor, leaving an account balance of \$14,369.28. This reduction in the amount of the debt indicated that Applicant has made \$200 monthly payments on the debt since January 2015. Applicant also stated that he is hoping to pay the account in full rather than continue to make the minimum payments. Applicant presented sufficient information to verify this debt is being resolved. (Tr. 23-27; AX B, letter, dated November 10, 2015; GX 5, e-mails dated November 30, 2015)

The delinquent debt at SOR 1.b is for a credit card opened in 2010. Applicant used the card to start a business buying damaged audio equipment. He would repair the equipment and sell it on the internet. The business did not succeed in that Applicant paid more for the damaged equipment than he made on resale. He made payments on the credit card of approximately \$200 a month until late 2012. He offered to make lower payments but he was not able to make those payments when unemployed. The creditor entered a judgment against Applicant. Instead of having his wages garnished, Applicant

paid the judgment in June 2015, using all of the savings he and his wife accumulated since gaining employment in January 2015. His bank statement reflects an over \$8,000 payment to the creditor. Applicant's attorney's requested that the garnishment order be lifted. The SOR 1.b debt is resolved. (Tr. 27-32, AX A., Garnishment Disposition, dated June 25, 2015; AX C, Bank Statement, dated June 10, 2015)

Applicant claims the credit card debt at SOR 1.c, used for groceries and other items when he was unemployed, was paid in mid-2015. He has been attempting to obtain proper documentation that the debt has been paid. He has not received the documents from the creditor, so he has not been able to provide documents to verify his claim of payment. However, the documents he presented reflecting payment of his other debts shows his claim of payment of this debt is credible. (Tr. 32-33)

The delinquent debt at SOR 1.d is a debt to a music supply store. Applicant purchased items from the store to use in his hobby as a musician. Applicant claims the debt is paid in full. Applicant's post-hearing submission includes his bank statements of September 2014 showing a payment of \$731.10 to the collection agency. The debt has been paid in full and resolved. (Tr. 33-34; AX C, Bank Statement, dated October 10, 2014)

The delinquent debt at SOR 1.e is for a cable company. Applicant closed his cable account believing that he had paid his entire debt to the cable company. He subsequently learned he had a balance on the account. His bank statement shows the account has been paid in full and resolved. (Tr. 34-35; AX D, Bank Statement, dated July 2015)

The delinquent debts at SOR 1.f, 1.g, 1.h, and 1.i are medical debts. When Applicant was medically retired, his medical expenses were covered under the military's medical system for five years since he was on the TDRL. Applicant incurred these medical expenses when he was being evaluated for a permanent placement on the TDRL at the end of five years. He was later granted permanent disability entitling him to use the military health care system, TRICARE. Applicant disputed these debts with the medical providers and TRICARE. TRICARE will accept resubmission of the debts for payment. While Applicant's dispute is still pending, he claims in his post-hearing submission to have voluntarily paid the small medical debts at SOR 1.f and 1.g. He provided no verification of these payments. Applicant established the legitimate nature of the dispute and his attempts to have the dispute resolved. (Tr. 35-37, 45-48)

Applicant denied intentional falsification of his security clearance application when he did not include any adverse financial issues on his e-QIP. He told the security investigator that he was unaware of the delinquent debts, had not received correspondence from the creditors, and did not have credit cards issued by some of the alleged creditors. He told the security investigator that he did not agree with the financial information presented by the investigator. He did not believe he had delinquent debt because he was making payments on the debts. However, Applicant stopped payments on some of his debt when he lost his employment.

At the hearing, Applicant stated that prior to completion of his e-QIP he had not checked his credit reports. Applicant testified that he was making payments on his accounts and the balances on the accounts have been reduced. In his post-hearing submission, Applicant reiterated that he did not intentionally falsify his e-QIP. He did acknowledge that after reviewing his credit reports he had at least one delinquent medical debt at the time he completed his e-QIP. (Tr. 48-51; GX 5, e-mail, dated November 30, 2015)

## **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.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant incurred delinquent debt after his medical discharge from the Navy. He and his wife had periods of unemployment resulting in their inability to meet all of their financial obligations. Applicant's history of delinquent debts is documented in his credit reports, his responses to questions of the OPM investigator at the personal subject interview, and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under the Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and (c) (a history of not meeting financial obligations). The evidence indicates only an inability to satisfy 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;

(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.

The mitigating conditions at AG ¶ 20 (a) applies in part. Applicant's unpaid debts are a continuous course of conduct and thus current. Applicant incurred the delinquent debt during periods of unemployment. He used credit cards to purchase the necessities he needed for his family. Applicant is now steadily employed and has been making payments on his delinquent debts since January 2015. He also has not incurred any additional delinquent debt since he commenced his steady employment in January 2015. His wife will shortly also start to be employed after completing maternity leave. Since Applicant and his wife will have steady employment, it is unlikely that he will incur additional delinquent debt.

The mitigating condition at AG ¶ 20(b) applies. Applicant incurred delinquent debt when he and his wife were unemployed. This problem was largely beyond his control. He acted responsibly under the circumstances. He has shown that he has paid some of his large debts (SOR 1.b, 1.d, 1.e) and disputed or paid the medical debts (SOR 1.e to 1.i). He established that he is making payments on his largest debt (SOR 1.a). Applicant claims to have paid the debt at SOR 1.c, but has not received verifying documents from the creditor.

The mitigating condition at AG ¶ 20(d) applies. For a good-faith effort under AG ¶ 20(d), 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 has a systematic plan to pay or resolve the past-due debts. He presented information to show payment of four of the five non-medical debts. He presented information to show he is making payments on his only remaining debt. He paid two medical debts even though he is disputing them. The evidence indicates that

Applicant's past-due debts have been or are being paid and resolved. Applicant has acted reasonably under the circumstances.

AG ¶ 20(e) applies. Applicant was covered by the military medical system when he incurred medical debts for treatment under civilian care in 2013 and 2014. He has a reasonable basis to dispute the medical debts since he was on the TDRL when he incurred the debts. He filed his dispute with both the creditors and the military medical system.

Applicant has taken reasonable action to resolve his past-due delinquent debts. He presented sufficient information to support responsible management of his finances. Applicant's financial problems are under control. Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Applicant's actions towards his finances are a strong indication that he will act to protect and safeguard classified information. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on 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, Appellant answered "no" to a question asking if in the last seven years, he had collection accounts, credit cards charged off, or past-due accounts. The credit reports show that Applicant did have such accounts. Applicant's omission of delinquent accounts from his security clearance application 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).



For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted facts from his March 25, 2013 e-QIP when he failed to list any adverse financial information. In his response to the SOR and at the hearing, Applicant denied intentional falsifying information on the e-QIP. When the allegation of falsification is controverted, the Government has the burden of proving it. Prove of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time of the omission.

Applicant did not deliberately fail to provide correct and accurate information on the security clearance application. Applicant and his wife had had extensive periods of unemployment. The family had limited income, so Applicant used credit cards to purchase necessities for the family. He admitted that when unemployed, he stopped making most of the payments on his credit cards. When employed, he made payments on his debts.

His testimony as to how the security clearance application was completed is credible. He did not check his credit report before completing his security clearance application. Since, he was making payments on his debts he did not believe he had delinquent debt. He had not used some of the credit cards in a long time and was not aware of a delinquent balance. He had not received notices from the creditors that he was delinquent on some accounts. When the questions on his finances were raised during the security interview, he was open and candid with the investigator that he was not aware of the debts but that they were being resolved. He had logical and fact-based reasons for believing he did not have delinquent debt. Therefore, the information does not establish that Applicant deliberately provided false and misleading information on the security clearance application.

### **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. I considered Applicant eight years of honorable active duty in the Navy. I considered that Applicant's and his wife's unemployment were circumstances beyond his control. He acted reasonably to manage his finances and pay past-due delinquent debts under the circumstances. He has paid the majority of those debts, and is making payments on his last remaining debt. He acted reasonable under the circumstances and showed responsible management of his finances. Applicant's reasonable and responsible financial management indicates that he will be concerned and act responsibly in regard to classified information. Applicant did not deliberately fail to provide accurate and correct financial information on his security clearance application. 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 and personal conduct guidelines.

### **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
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Subparagraphs 1.a- 1.i:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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### **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.

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THOMAS M. CREAN  
Administrative Judge