



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-02313
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

May 7, 2010

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor on September 23, 2008. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated October 28, 2009, to Applicant 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; 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 within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on November 4, 2009.

Applicant answered the SOR on November 20, 2009, admitting five and denying six of the factual allegations under Guideline F. He provided a detailed explanation of his financial issues, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 10, 2009, and the case was assigned to me on January 14, 2010. DOHA issued a Notice of Hearing on January 27, 2010, scheduling a hearing for March 11, 2010. I convened the hearing as scheduled. The government offered four exhibits, marked Government Exhibits (Gov.

Ex.) 1 through 4 which were admitted without objection. Applicant and one witness testified on his behalf. Applicant offered two exhibits marked Applicant Exhibits (App. Ex.) A and B, which were admitted without objection. I kept the record open for Applicant to submit additional documents. Applicant timely filed five additional documents marked App. Ex. C through G, which were received without objection. (Gov. Ex. 5, Memorandum, dated March 26, 2010) DOHA received the transcript of the hearing (Tr.) on March 22, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant admitted five and denied six of the 11 factual allegations in the SOR with explanation. I included Applicant's admissions and explanations in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 34 years old, and has worked as an equipment specialist and engineering consultant for a defense contractor since June 2008. His primary duty is to instruct military personnel in equipment and technology applications. He has an associate's degree in engineering technology. Applicant was married from March 1998 until he divorced in July 2008. His monthly pay is \$4,000, with monthly expenses of \$2,500, leaving \$1,500 in monthly discretionary funds. (Tr. 9-15, 53-55)

Applicant and a partner saw an opportunity to invest in the housing market in early 2000. They purchased a number of houses, renovated them, and sold some at a profit. They financed supplies and maintenance contracts using credit cards personally issued in Applicant's name and his partner's name rather than a business entity. The housing market collapsed starting in 2007, forcing Applicant and his partner to default on mortgage and credit card payments. In addition, Applicant used credit cards to pay some of his personal expenses since he was not receiving income from his real estate investments. Applicant's divorce in 2008 and his father's death that same year added to his financial problems. All of his debts are the result of his business problems. His personal debts are current and being paid as agreed. (Tr. 18-22)

Credit reports (Gov. Ex. 3, Credit report, dated October 21, 2008; Gov. Ex. 4, Credit report, dated March 19, 2009) show the following delinquent debts for Applicant: credit card debts of \$5,038 (SOR 1.a), \$4,337 (SOR 1.c), \$4,633 (SOR 1.d), \$5,365 (SOR 1.e), \$4,260 (SOR 1.f), \$10,062 (SOR 1.g), and \$7,357 (SOR 1.h); an unpaid judgment for a mortgage of \$256,068 (SOR 1.b); another mortgage for \$192,000 (SOR 1.i); a credit union debt of \$59,380 (SOR 1.j); and another mortgage for \$21,501 (SOR 1.k).

Applicant claims his delinquent debts are business debts and not personal debts. He has separated his personal debts from his business debts. His credit reports do show that his personal debts are paid as agreed. Department counsel agrees. (Tr. 18-20, 65-66; Gov. Ex. 3, Credit report, dated October 21, 2008; Gov. Ex. 4, Credit report,

dated March 19, 2009). A debt to American Express is not listed as a security concern since it is paid as agreed. Applicant has reduced that debt in the last year by paying over \$13,000, reducing the debt from approximately \$21,000 to approximately \$8,100 (Tr. 22)

The delinquent debts at SOR 1.a, 1.c, 1.d, 1.e, and 1.f are real estate business expenses Applicant shares with his partner. Applicant and his partner used credit cards issued to them personally to make business-related purchases. There were no joint or business credit cards. While the debts were joint business debts, only the person named on the card is personally responsible for the debts. Each partner has been accumulating funds as he can and the partners jointly used the funds to pay off the credit cards. The debts at SOR 1.a, 1.c, 1.e, and 1.f have not been paid. The debt at SOR 1.d has been paid. (Tr. 44-46; App. Ex. B, Stipulation, dated September 1, 2009; App. Ex. D, Payment and Judgment Dismissal, dated January 4, 2010)

The debt at SOR 1.b is for a mortgage on one of the houses Applicant and his partner were renovating. The loan has been modified and is being paid. (Tr. 44; App. Ex. F, Loan modification, date August 8, 2009)

The debts at SOR 1.g and SOR 1.h are the same debt. The listing at SOR 1.g is for the original debt, and the listing at SOR 1.h is the debt in collection by a collection agency. The debt originated from approximately 2005 to 2007, when Applicant used this account to supplement his income during the housing downturn. The original debt was written off by the original creditor when it was not paid, and sent to a collection agency. The collection agency debt has not been written off. Applicant has not made any payments on this debt. (Tr. 46-48)

The delinquent debt at SOR 1.i is for a mortgage on another of the properties. The debt has been settled and paid. (Tr. 48; App. Ex. C, Settlement and Payment documents, dated August 12, 2009)

The delinquent debt at SOR 1.j is for a loan used to renovate properties. Applicant reached a settlement with the creditor to pay \$100 monthly until the debt is paid. Applicant is paying according to the plan. (Tr. 26-27, 33-35, 49; App. Ex. A, Settlement documents, dated June 17, 2009; App. Ex. G, Payments, dated December 29, 2009, January 27, 2010, and February 26, 2010)

The delinquent debt at SOR 1.k is for a second mortgage on one of the properties. The loan has been modified and payments are being made. (Tr. 49; App. Ex. H, Settlement documents, dated August 6, 2009)

A government program manager, who is a retired Army officer, testified that he has known and worked with Applicant for over 12 years. They worked together on projects teaching soldiers new technologies. Applicant was good with soldiers and did excellent work, and made contributions to soldiers' effectiveness. He considers Applicant to be trustworthy, with good judgment, and responsible. He is aware of

Applicant's financial problems, but knows of no issues that would affect his opinion of Applicant's loyalty. (Tr. 59-64)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 to obtain 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 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. 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 their 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 his finances in such a way as to meet his financial obligations. Applicant's delinquent debts are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debts from his real estate business buying, renovating, and selling houses when the real estate business suffered a downturn starting in 2007.

I considered Financial Considerations Mitigating Conditions (FC MC) 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), and FC MC AG ¶ 20(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). The mitigating conditions apply. Applicant's delinquent debts occurred from business ventures in the housing market. He bought, renovated, and sold houses with a partner. He used credit cards and loans to purchase equipment and services to renovate the houses. The housing market started a downturn in 2007, and the partners could not sell the houses, pay their debts, and recoup their investments. They incurred delinquent mortgages and delinquent credit card and loan payments. The real estate downturn was unforeseen and beyond Applicant's control. He is no longer in the housing market so the circumstances of delinquent mortgages and credit cards should not recur. He acted responsibly under the circumstances by keeping his personal finances current, modifying the mortgages so he can continue to pay them, and saving funds with his partner to pay his business debts as best he can. His debts and finances do not cast doubt on his current reliability, trustworthiness, or good judgment.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC 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, concrete method of handling debts is needed. Applicant has sufficient discretionary funds to pay his delinquent debts. He presented sufficient information to show all of the delinquent debts arose from a failed real estate business and not from his personal expenses. His personal bills are paid as agreed. Since two debts were duplicates, there are ten delinquent debts of security concern. Two of the debts have been paid, and three others are being paid according to payment plans. Five debts have not been paid, but Applicant and his partner are saving funds to pay the debts. Applicant's action in paying debts and saving funds to pay the remaining debts demonstrates a good-faith effort to repay his creditors.

### **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 the 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 that Applicant is a highly regarded employee and is considered trustworthy, reliable, honest, competent, capable, and exercises good judgment.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his actions to reduce his outstanding indebtedness are credible and realistic. There is no requirement that a plan

provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Applicant's personal finances are in order, and his debts are from a failed business. He presented sufficient information to show he is taking reasonable and responsible action to resolve his financial issues. He paid or is paying some of his debts and has a plan to and is taking action to pay the remaining debts. Applicant's management of his finances and payment of past obligations indicates he will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on his finances. Overall, on balance the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations.

### **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.k: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with 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