



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



In the matter of: )  
)  
) ISCR Case No. 10-00420  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

June 9, 2011  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On September 16, 2009, Applicant submitted a Questionnaire for Investigations Processing (e-QIP) as a requirement for a position with a defense contractor. 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 5, 2010, to Applicant 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; 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 October 11, 2010.

Applicant answered the SOR on October 27, 2010, and denied all allegations with an explanation that included copies of Chapter 13 bankruptcy documents. Applicant denied the debts because he was paying the debts by Chapter 13 bankruptcy. Applicant requested an administrative decision. Department Counsel timely requested a hearing pursuant to Paragraph E3.1.7 of the directive. (Hearing Exhibit 1) Department Counsel was prepared to proceed on January 24, 2011, and the case was assigned to me on February 23, 2011. DOHA issued a Notice of Hearing on March 18, 2011, scheduling a hearing for April 5, 2011. I convened the hearing as scheduled. The Government offered five exhibits, which I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified, and did not offer any exhibits. The record was held open for Applicant to submit documents discussed during the hearing. Applicant timely submitted one document marked and admitted as Applicant Exhibit (App. Ex.) A. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 6, Memorandum, dated April 21, 2011). DOHA received the transcript of the hearing (Tr.) on April 18, 2011.

### **Procedural Issues**

Applicant did not receive the Notice of Hearing until a few days before the hearing. He discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on March 18, 2011. Applicant is entitled to 15-days-advanced notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on April 5, 2011, and he had sufficient time to prepare. He waived the 15-day-notice requirement. (Tr. 5-7)

### **Findings of Fact**

Applicant denied all allegations under both Guideline F and Guideline E. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 47-year-old computer controlled machinist working for a defense contractor. He is a high school graduate, and he has an associate's degree. He married for the first time in 1985 and divorced in 1997. One daughter, now an adult, was born from this marriage. He married the second time in 2004. There are no children from this marriage. Applicant has worked for the same company since 2004. His net monthly income is approximately \$1,800. A Chapter 13 bankruptcy payment of \$540 is deducted from his pay before the net pay is determined. His recurring monthly expenses are approximately \$1,500, leaving him a net monthly disposable income of approximately \$300. His wife is presently unemployed but does receive approximately \$130 weekly in unemployment benefits. He does not have a car payment. (Tr. 17-20, 28-33, 41-44; Gov. Ex. 1, e-QIP, dated September 16, 2010; App. Ex. A, Earnings Statement, dated April 1, 2011)

Credit reports (Gov. Ex. 2, dated December 23, 2009; Gov. Ex. 3, dated September 24, 2009), and Applicant's response to Interrogatory (Gov. Ex. 4, dated June

3, 2010) show a charged-off account for Applicant for repossession of two sport watercraft for \$4,973 (SOR 1.a); a department store credit card used for home repairs in collection for \$3,850 (SOR 1.b); a bank loan used to pay a medical procedure for his wife charged off for \$5,294 (SOR 1.c); a home improvement store credit card charged off for \$3,577 (SOR 1.d); a medical debt in collection for \$70 (SOR 1.e); a cell phone account in collection for \$644 (SOR 1.f); and another medical account in collection for \$462 (SOR 1.g). Applicant agrees that these are his debts and total about \$20,000. (Tr. 21-22)

Applicant started missing bill payments in 2000 when he was laid off. He would find a job, work for a few months, and then get laid off again. He was laid off from December 2002 until May 2003 when his employer went bankrupt. His wife was working but she was an hourly employee making slightly in excess of minimum wage. His debts were not the result of lay-offs but the result of not being able to make debt payments due to lost wages. Applicant sought help from a debt consolidation company in 2002 and all of his debts were consolidated into one debt. He started a monthly payment plan of \$400 with the debt consolidation company and made payments for over two years until late 2004 when both he and his wife were again laid off. In addition, his wife broke her ankle requiring medical treatment and she could not work for over six months. The medical care resulted in the delinquent debt at SOR 1.c. Applicant could no longer make payments and the consolidation company dropped him from participation in their plan. He did what he could under the circumstances to keep his mortgage current and seek employment. (Tr. 15-16, 22-24)

Applicant consulted an attorney and determined the only procedure to resolve his debt was to file bankruptcy. He filed the Chapter 13 bankruptcy in May 2010. His wage earner plan calls for the payment of \$270 per pay period or \$540 monthly for a period of 60 months. All debts alleged in the SOR are included in the bankruptcy payment plan. Applicant has owned his home for over 17 years so his home is not included in the bankruptcy action. He has kept his mortgage payments current ever since he entered the debt consolidation program. He pays his current debts as agreed. His earnings statement shows that the bankruptcy payments are deducted from his bi-weekly pay. (Tr. 16-19; Response to SOR, Bankruptcy documents, dated June 27, 2010; App. Ex. A, Earning Statement, dated April 1, 2011)

When Applicant was a high school student in the early 1980s he used marijuana with friends. Applicant was injured in 2004 and his doctor prescribed a pain killer. He became addicted to the pain killer, and sought medical assistance for the addiction in June 2005. He remained addicted even after being prescribed methadone to resolve the addiction. In August 2005, he sought help from a psychiatrist for his addiction. In completing the medical history and information form for the psychiatrist, Applicant noted under the education heading that he "smoked pot everyday." This was an inaccurate statement. Applicant was sick due to his withdrawal from the pain killer and was in a hurry to complete the form. An accurate accounting of his high school drug usage was that he used marijuana only 20 times because the marijuana made him ill and he stopped using marijuana shortly after completing high school. In an interrogatory

response to a question from security adjudicators, Applicant stated he used marijuana about 20 times in high school from 1979 until 1980. He noted he stopped using marijuana at the end of high school. Applicant responded YES to question 23d on the e-QIP asking if in the last seven years, he was counseled or treated for use of drugs. He noted his addiction to the pain killer and his treatment by and contact information for the psychiatrist. Applicant did not include any information concerning his high school marijuana use in response to question 23a since the use was beyond the time period of the question.

## **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.

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 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 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. Credit reports show and Applicant admitted at the hearing that he had over \$20,000 in delinquent debts. The credit reports and Applicant's admissions at hearing are sufficient to raise a security concern and consideration of Financial Considerations 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). This is a circumstance of an inability and not an unwillingness to satisfy debt.

The Government produced sufficient evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government. Applicant raised conditions that may mitigate the security concern.

I considered Financial Considerations Mitigating Condition (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). These mitigating conditions apply. Applicant incurred the delinquent debt when he and his wife were laid off and lost income. They were able to make the mortgage payments but no payments on other debts. After another lay-off in

2003, Applicant consulted a debt counselor. His debts were consolidated, and he was making payment to the debt reduction program until he and his wife were laid off again in late 2005. He could no longer afford to make payments and was dropped from the program. After becoming employed again, he started a Chapter 13 bankruptcy proceeding in May 2010. He has made monthly \$540 payments on the wage earner plan since then. While the debts were incurred many years in the past, Applicant has taken the necessary steps to resolve them. The multiple lay-offs that caused the debts were beyond his control. Applicant's history shows that as long as he is employed, he takes the necessary steps to resolve his debts. He acted responsibly under the circumstances by attempting to pay the debts using a debt consolidation company or Chapter 13 bankruptcy. So far, the only factor that in the past prevented him from paying his debt was the loss of income when laid off. Applicant established that he acted responsibly under the circumstances to resolve his debts.

I considered FC MC ¶ 20(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). This mitigating condition applies. Applicant consulted a debt consolidation company and his debts were consolidated. He also received counseling as part of his Chapter 13 bankruptcy. His financial problems are being resolved and are under control.

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 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. An applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant's first plan to pay his debts was to use the debt consolidation company. The plan failed only when he was laid off and could not make the payments on the plan. Since returning to work, he sought Chapter 13 bankruptcy protection and is making payments under that plan. Applicant's past actions to resolve his debts shows that he was responsible towards his finances. He provided significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay his creditors or resolve debt through both debt consolidation and bankruptcy. The past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment.

## **Personal Conduct**

A security concern is raised 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be entrusted to properly safeguard classified information. The security clearance system 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 information is in the best interest of the United States Government.

Applicant noted on a medical form that he smoked marijuana daily in high school. In response to questions on an interrogatory, Applicant noted that he used marijuana only approximately 20 times in high school. The differences in his responses may raise a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant was sick when he completed the medical form. He was in a hurry to complete the form and did not pay careful attention to his responses. His report of daily high school usage was inaccurate. He testified at the hearing directly and credibly. He explained his inaccurate response to the question on the interrogatory. His reasonable explanation for the medical response shows he did not deliberately provide inaccurate information with the intent to deceive. I find for Applicant as to personal conduct.

### **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. Applicant presented sufficient information to show he has taken reasonable and responsible action to resolve his financial issues when employed. His financial problems are only when he was laid off. His financial problems were caused by multiple lay-offs which were beyond his control. Bankruptcy is a legal and permissible means of resolving debt, especially a Chapter 13 bankruptcy. Applicant's management of his finances and attempts to resolve his debts indicate he will be concerned, responsible, and careful regarding classified information. Also, Applicant did not provide false and misleading information in response to interrogatory questions with intent to deceive because he mistakenly, while sick, provided the inaccurate information on a medical form. Applicant mitigated security concerns based on his finances and personal conduct. Overall, the record evidence leaves me without questions or 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 and personal conduct and he should be granted access to classified information.

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

### **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.

---

THOMAS M. CREAN  
Administrative Judge