



Department Counsel submitted the Government's written case on August 11, 2011. Applicant received a complete file of relevant material (FORM) on August 26, 2011, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. The case was assigned to me on October 27, 2011.

### **Findings of Fact**

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

Applicant is 49 years old and has worked for a defense contractor as an electronics technician since March 2008. Applicant served over 22 years on active duty in the Navy from August 1980 until May 2002. He retired with an honorable discharge as a chief petty officer (E-7). Applicant held a security clearance while on active duty. He has been married since 1984, and he has three step-sons. He is a college graduate. (Items 5 and 6) Applicant listed his net monthly income as \$4,434.57, his wife's net monthly salary as \$1,032, and his monthly retired pay as \$1,782.12, for a total monthly family income of \$7,248.69. He listed his monthly family expenses as \$6,334.56, leaving a net remainder for discretionary spending of \$914.13. (Item 6 at 35)

Credit reports (Item 7, credit report, dated March 23, 2011; and Item 8, credit report, dated December 8, 2009) show delinquent credit card debt in collection for \$20,884 (SOR 1.a), and a delinquent credit card in collection for \$19,172 (SOR 1.b).

Applicant purchased a home on the West Coast while stationed there in the Navy. Immediately after he retired, he was unemployed for a few months. He used credit cards to pay his living expenses while unemployed. He moved back to his home state but could not sell the house at his former location. He hired a property manager and rented the house. The rent did not cover his mortgage and other housing costs. He purchased a home in his new location. He had a good job at a good salary that enabled him to pay the mortgage on both of his houses. A year after retiring and moving, he was laid off from his new position. He was unemployed for slightly over a month before finding employment at a lesser weekly income. With the income from his new position, he was not able to make the mortgage payments on both homes. The home at his former location was foreclosed but the mortgage shortfall was covered by his Veteran's Administration loan.

The credit card that is the subject of SOR 1.a was opened by Applicant while on active duty. When he retired and was unemployed, he used the card to pay living expenses. The card became delinquent in May 2002, when he lacked sufficient income because of unemployment. He informed the creditor he could not make the payments, but no arrangements were made for payment of the card. He is unsure when the account went to collection. He believes the balance at the time it went to collection was

approximately \$2,000. He acknowledges he owes the debt and his plan is to pay it after satisfying an Internal Revenue Service (IRS) debt. (Item 6 at 3-4)

The credit card account at SOR 1.b was opened in 1998 and became delinquent in 2003 when Applicant was overextended financially. When the creditor notified him of the debt, he would make small payments that were less than the required minimum payment. The last payment made was in mid 2003. Applicant indicated he had an agreement with a debt management company starting in January 2004 to resolve his credit card debts. He paid them \$500 per month and the company would negotiate with the creditors for lower payments. He planned to have the debts paid in four years. However, the company did not operate according to the law and his funds were sequestered by the Federal Trade Commission. This caused him to fail to meet his payment required for the credit card at SOR 1.b. The account was charged-off by the creditor for approximately \$8,000 to \$9,000 in 2004. He was then informed by his income tax preparer that he owed significant income tax because the charged-off account was reported by the creditor to the IRS as income. The IRS informed him he owed taxes on the charged-off income. He entered a payment plan with the IRS and has been paying \$250 per month on the taxes owed. He expects to pay the IRS shortly. He provided no documentation from either the creditor or the IRS to verify the charge-off, the amount considered as income, and any payments made to the IRS. (Item 5 at 42, and Item 6 at 5)

### **Policy**

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 his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts, listed in credit reports and admitted by Applicant, raise 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). The two debts, which have been delinquent since 2003 and total over \$40,000, establish a history of an inability and unwillingness to pay debts.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts 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.

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 ¶ 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 do not apply. Applicant incurred delinquent debt when he retired and was unemployed for a time and used credit cards for living expenses. Even though he experienced a period of unemployment, he was receiving retired pay. Applicant presented no information to indicate that his debts were incurred under such unusual circumstances that the debts would not recur. In fact, it appears the debts were incurred by Applicant in the normal course of living.

Applicant indicated he had an agreement with a debt solution company to pay his credit card debts. Applicant presented no information, evidence, or documentation to verify his assertions of an agreement with the debt resolution company, any payments on the debts, or payments to the IRS as a result of the debt charge-off. The Government's written case puts Applicant on notice that he needed to provide such information to verify his assertions. He had the opportunity to respond with the right information but he did not. Without information from Applicant, it cannot be determined if his financial problems are being resolved. With evidence of delinquent debt and no documentation to support reasonable management of his finances, it is obvious that his financial problems are not under control.

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). Applicant presented no information to indicate an agreement with a debt solution company which may have required that Applicant receive credit counseling. There is no indication his financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 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. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. Applicant failed to establish such a meaningful track record.

Applicant stated he had a plan with a debt solution company to pay his credit card debts, and that he has a payment plan with the IRS. However, he has not presented sufficient evidence to show either the agreement or the payments. He has sufficient income to meet his financial obligations and has at least two years of steady employment. Applicant's lack of documented action to pay his debts is significant. Based on the acknowledged delinquent debts, Applicant has not acted responsibly towards his debts and finances. 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. I considered that Applicant served 22 years on active duty in the Navy, held a security clearance during this time, and retired with an honorable discharge. Applicant has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems. He has not even shown that he has a credible plan to resolve and pay his delinquent debts. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or act responsibly in regard to classified information. 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. Eligibility for access to classified information is denied.

### **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.b:                      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.

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THOMAS M. CREAN  
Administrative Judge