



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



In the matter of: )  
)  
) ISCR Case No. 11-10541  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

04/01/2014

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant is a 28-year-old employee of a defense contractor. He has 23 outstanding debts that became delinquent between 2008 and 2013, totaling around \$38,000. Applicant failed to submit sufficient evidence to show financial responsibility concerning the debts alleged in the Statement of Reasons (SOR). Clearance denied.

**Statement of the Case**

Applicant submitted the pending security clearance application (SCA) on May 18, 2011. On June 26, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF), Industry Division, issued Applicant a SOR listing security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on July 19, 2013, and elected to have his case decided on the written record in lieu of a hearing.

---

<sup>1</sup> The DOD acted 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

A copy of the file of relevant material (FORM), dated October 31, 2013, was provided to Applicant by the Defense Office of Hearings and Appeals (DOHA) via transmittal letter dated November 8, 2013. Applicant received the FORM on November 25, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not respond to the FORM and submitted no additional information. The case was assigned to me on March 10, 2014.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.l, 1.q through 1.s, and 1.u through 1.w, with some explanations. He denied the allegations in SOR ¶¶ 1.m through 1.p, and 1.t. His admissions are hereby incorporated as findings of fact. After a thorough review of the evidence of record, including his SCA, his answers to the SOR and DOHA interrogatories, and the three credit bureau reports contained in the FORM, I make the following findings of fact:

Applicant is a 28-year-old assembler employed by a defense contractor. He graduated from high school in May 2003. Applicant married his first wife in March 2006, and he was divorced in January 2007. He married his wife in December 2009, and they have two young children, ages three and five.

Applicant's work history shows that he worked numerous jobs for short periods of time from June 2003 to October 2008. He worked full-time for a company from October 2008 to April 2009, but was fired for missing work. He was unemployed from April 2009 until around May 2010. Applicant joined the National Guard in June 2009. He has been drilling during the weekends since then. His current pay grade is specialist (E-4). He has been consistently employed since May 2010. He started working for his current employer, a government contractor, in May 2011.

In October 2009, while attending Army basic training, Applicant was interviewed by a government investigator concerning 13 delinquent accounts discovered during his background investigation. The delinquent accounts included his truck loan, a credit card he used to pay for vacation expenses, a payday loan, and a motorcycle loan. Applicant did not recognize the remaining delinquent accounts. He explained that his financial problems were caused by him losing his job and not having money to pay his debts. He promised to pay some of the debts with his military service earnings, to investigate the debts he did not recognize, and to resolve his financial problems.

Applicant disclosed in his May 2011 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent credit cards and debts in collection, some of which were over 180 days delinquent. The background investigation addressed his financial problems and revealed the 23 delinquent debts alleged in the SOR, totaling close to \$38,000, some of which have been delinquent since 2008. The SOR debts are established by the credit reports submitted by the Government and by Applicant's admissions.

Applicant was interviewed by a government investigator in June 2011 concerning his continuing financial problems. He was confronted with many of the same delinquent debts he was asked about during his 2009 interview. Applicant again denied knowledge of most of the debts. He claimed that his financial problems were caused by his first wife. He claimed that when they were married she would open credit and retail accounts in his name without his knowledge. She would then overcharge the accounts and not make any payments. A review of the three credit reports in the FORM show that most of the delinquent accounts are identified as Applicant's individual accounts. Only two delinquent accounts were identified as joint accounts.

Applicant told the investigator that he believed that his ex-wife's spending habit and her opening accounts in his name without his knowledge were circumstances beyond his control. Concerning his financial situation at the time of the interview, Applicant claimed that he was in a comfortable financial position, and that he was capable of meeting his financial obligations. He stated that he did not intend to have any future financial delinquencies. He told the investigator that he had not participated in financial counseling.

In his May 2013 response to DOHA interrogatories, Applicant claimed that many of the alleged SOR accounts were opened by his first wife in his name, but without his knowledge. Concerning the debts alleged in SOR ¶¶ 1.h, 1.i, 1.q, 1.r, 1.s, and 1.t, Applicant claimed he was told that because they were charged off, he could not do anything directly with the creditors. He claimed that he was unable to find information about the debts alleged in SOR ¶¶ 1.b, 1.e, and 1.u. He also claimed that the debt alleged in SOR ¶ 1.j was paid through a debt payment agreement coming out of his National Guard drilling pay. He stated that he could not find any information about the debts alleged in SOR ¶¶ 1.m through 1.p, and that he was disputing these debts. Applicant failed to submit any documentary evidence to show any payments made, contacts with creditors, payment agreements established, any disputed debts, or of any other efforts taken to resolve his delinquent debts.

Applicant's May 2013 personal financial statement shows his net monthly income was approximately \$2,150. His monthly expenses plus debt payments totaled \$1,456; for a net monthly remainder of \$694.

### **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that 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)

The evidence established the 23 delinquent debts alleged in the SOR, totaling around \$38,000, some of which have been delinquent since 2008. Financial considerations disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

AG ¶ 20 lists conditions that could mitigate the financial considerations security concerns:

(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 problem 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 initiated a good-faith effort to repay 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.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions apply. Applicant's financial problems are current and ongoing. He owes a large debt, and he does not seem to have the financial means, or the desire, to address the debt. He claimed that his financial problems were the result of his 2007 divorce, his ex-wife opening accounts in his name without his knowledge, and his 2010 unemployment period.

A review of Applicant's credit reports shows that most of the large delinquent debts pertain to accounts Applicant individually opened, including his loans to purchase a truck and a motorcycle, and several credit card accounts. Other delinquent accounts were opened after the 2007 divorce. Applicant presented no documentary evidence of any criminal complaints filed against his ex-wife for opening fraudulent accounts, or of efforts to dispute the accounts allegedly opened by his ex-wife without his knowledge.

Concerning his unemployment period, Applicant was terminated for being absent from his work. Thus, his unemployment period cannot be considered as a circumstance beyond his control. Moreover, Applicant has been fully employed since May 2010. Notwithstanding, he presented little evidence of any debt payments, contacts with creditors, or that he otherwise attempted to resolve his debts. He presented no evidence to show he participated in financial counseling.

Applicant's scant favorable evidence is insufficient to show financial responsibility with respect to any of the debts alleged in the SOR. He was interviewed by a government investigator in 2009 concerning his delinquent debts. At that time, he was placed on notice of the DOD's financial considerations concerns. He promised to

establish payment plans, to investigate those debts that he did not recognize, and to resolve his financial problems.

Applicant failed to submit documentary evidence of any debt payments, contacts with creditors, or of any efforts to otherwise resolve his financial problems. In light of all available evidence, Applicant's unresolved debts cast doubt on his current reliability, trustworthiness, and judgment.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is a 28-year-old employee of a defense contractor. He has 23 outstanding debts, some of which became delinquent in 2008. He failed to submit sufficient documentary evidence to establish financial responsibility in the handling of his financial obligations.

### **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.w:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

---

JUAN J. RIVERA  
Administrative Judge