



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



In the matter of:

	)	ISCR Case No. 11-10665
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

11/22/2013

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 9, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor (Item 4). Applicant had previously submitted an e-QIP on February 21, 2010 (Item 5), and a standard form SF 86, Security Clearance Application, on September 27, 2005 (Item 6). There is no indication in the file that Applicant was ever granted eligibility for access to classified information. Applicant was interviewed by security investigators on July 18, 2006 (Item 8), and June 3, 2011 (Item 7). On February 14, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F (Item 1). 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 in the DOD on September 1, 2006.

Applicant received the SOR on February 26, 2013. (Item 2) He answered the SOR on January 3, 2013. He admitted one SOR allegation (SOR 1.d), and denied the remaining 15 allegations. Applicant elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on July 30, 2013. Applicant received a complete file of relevant material (FORM) on August 8, 2013, 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 23, 2013.

### **Findings of Fact**

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

Applicant is 47 years old and has never been married. He served on active duty in the United States Army from May 1985 until March 1999. He then served in the United States Army Reserve from March 1999 until January 2007 when he was discharged with a general discharge as a sergeant first class (E-7). After leaving the Army Reserve, he worked for a defense contractor as an equipment maintenance supervisor in Afghanistan from May 2007 until December 2010. He has been unemployed since December 2010. (Item 4)

The SOR lists, and credit reports (Item 9, dated January 7, 2013; Item 10, dated August 21, 2012; Item 11, dated May 19, 2011; Item 12, dated March 2, 2010; and Item 13, date October 28, 2005) confirm the following delinquent debts for Applicant: a charged off account for \$880 (SOR 1.a); a charged-off credit card debt for \$5,790 (SOR 1.b); a utility debt in collection for \$121 (SOR 1.c); a grocery chain account in collection for \$139 (SOR 1.d); a charged off credit card account for \$8,886 (SOR 1.e); a judgment for a finance company for \$505 (SOR 1.f); a debt to a telephone company for \$153 (SOR 1.g); an account in collection for \$225 (SOR 1.h); an account in collection for \$408 (SOR 1.i); a medical account in collection for \$123 (1.j); an account in collection for \$98 (SOR 1.k); a telephone company account in collection for \$2,050 (SOR 1.l); an account in collection for \$664 (SOR 1.m); an account in collection for \$29,464 (SOR 1.n); a television service account in collection for \$111 (SOR 1.o); and an account in collection for \$2,572 (SOR 1.p). The total delinquent debt is approximately \$52,000.

Applicant denies all of the debts except for the debt to a grocery store at SOR 1.d. While he admits that debt, he notes that at the time he learned of the debt he was in Iraq and could not repay the debt. He has not provided any information that this debt has been repaid since he returned from Iraq. As to all other debts, he claims to have no

knowledge of the debts nor did he admit to ever opening the other accounts that are listed in the SOR (Item 3).

He did not list any delinquent debt in the security clearance application he submitted in 2005 (Item 6). In the e-QIP he submitted in 2010, Applicant listed ten delinquent debts noting that the debts were either closed, unknown, or in dispute. In the e-QIP submitted in 2011, Applicant listed only two delinquent accounts, both were listed in the 2010 e-QIP (Items 4, 5, and 6).

Applicant was provided financial interrogatories in September 2012. In response to specific questions, he acknowledges the grocery chain debt in SOR 1.d but stated it had not been paid. He admitted that most other debts were unpaid. He stated that some debts were paid, but he provided no documentation to verify that payment had been made. (Item 7)

Applicant was interviewed by a security investigator in July 2006 about his financial delinquencies. He acknowledges some of the debts AND claimed they had been paid or resolved. He stated he did not recognize many of the debts and could not provide any information on the debts. (Item 8)

Applicant was interviewed by a security investigator in June 2011. He explained he has been unemployed since December 2010 but has a position pending a decision on his eligibility for access to classified information. He stated he owed state taxes but was negotiating a payment plan. He intends to pay the debt. He stated he did not know of a judgment against him (SOR 1.f) but would inquire about it and start to make payments. Applicant acknowledged the credit card debt at SOR 1.a, but asserted the account was paid and closed. He also stated he paid the utility debt in SOR 1.c. Applicant could not recall any of the other debts listed against him but stated his intention was to find out who he owed and start making payments. Applicant has not presented any documents to show that he made any inquiries concerning his debts, made any payment arrangements, paid any of his debts, or corroborate any statements he made concerning his debts and financial situation (Item 7).

On a personal financial statement attached to his response to interrogatories, Applicant stated that his net monthly income was \$8,876, with a net monthly remainder of \$2,900 (Item 7 at 9). Applicant's response to the interrogatories was dated November 3, 2012. Applicant provided a pay sheet from his employer for the pay period of October/November 2012. It should also be noted that Applicant states he has been unemployed since December 2010. Also Applicant believes his identity may have been stolen while he was serving overseas (Item 7, Testimonies at 4).

### **Policies**

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 finances in such a way as to meet financial obligations. Applicant's credit reports showing a history of delinquent debts raises 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 history of delinquent debts shows both an inability and unwillingness to satisfy or resolve the debt.

The Government produced substantial evidence by way of credit reports, Applicant's answers to Interrogatories, and Applicant's responses to security investigators to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations.

I considered all of the Financial Consideration Mitigating Conditions and find that none apply. I specifically considered Financial Considerations Mitigating Condition 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); 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). Applicant's debt is current and has not been resolved. He claims his identity was stolen but presented no information concerning what action he took concerning his lost identity or how that affected his financial situation leading to delinquent debt. He was employed until December 2010 and could have resolved at least the smaller debts before becoming unemployed. He did not prove he acted responsibly under the circumstances.

I also considered AG ¶ 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 did not present any information that he sought or received financial counseling, and his financial situation is not under control.

Applicant was receiving military pay until at least 2007. He then worked for a defense contractor until December 2010, part of the time overseas making a good salary. From the credit bureau reports most of the debts originated while he was receiving military pay or employed with the defense contractor. Applicant knew he had delinquent debt in 2010 when he completed his first e-QIP. At times, he admitted his debts and at times he denied knowledge of the debts. He stated his intent to learn of the

debt but presented no information of any action taken to learn of or resolve his debts. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. He has not presented information to show he acted responsibly towards his finances. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to inquire about his debt or make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is a strong indication that he will not protect and safeguard classified information. 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. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. 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.p:                      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.

---

THOMAS M. CREAN  
Administrative Judge