



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



In the matter of:

	)	ISCR Case No. 11-10676
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg J. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

06/13/2013

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**Decision**

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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 February 22, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 5) He was interviewed by a security investigator on June 10, 2011, and verified the accuracy of the interview summary on October 1, 2012. (Item 7) On December 3, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eight 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 December 19, 2012. (Item 3) He answered the SOR on January 3, 2013. He admitted three SOR allegations (SOR 1.a, 1.e, and 1.h), and denied five (1.b, 1.c, 1.d, 1. f, and 1.g). Applicant elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on March 28, 2013. Applicant received a complete file of relevant material (FORM) on April 11, 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 May 23, 2013.

### **Findings of Fact**

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

Applicant is a 45 years old and has been a warehouse worker for a defense contractor for over five years. His employment history shows positions working in shipping and receiving since 1994. Applicant was steadily employed from 1994 until July 2006, unemployed from July to November 2006, and again steadily employed from November 2006 until present. He has been married since 1999 and has three children. He has not served in the military and has not previously held a security clearance. (Item 5) A Personal Financial Statement submitted in response to interrogatories shows a net monthly income for Applicant and his wife of \$5,798, with net monthly expenses of \$5,095. After paying some debts, Applicant's net monthly remainder is \$243. (Item 6, at 164)

The SOR lists, and credit reports (Item 9, dated March 27, 2013; Item 10, dated August 21, 2012; Item 11, dated April 6, 2011; and Item 12, dated March 29, 2008) confirm the following financial issues for Applicant: a Chapter 13 bankruptcy filed in September 2010 but in default (SOR 1.a); a charged-off credit union debt for \$14,000 (SOR 1.b); a second mortgage 120 days past due for \$3,000 with a loan balance of \$27,000 (SOR 1.c); a homeowners' association lien filed in 2010 for \$1,983.25 (SOR 1.d); an Internal Revenue Service (IRS) debt for unpaid taxes of \$4,065 (SOR 1.e); a credit card debt in collection for \$23,940.11 (SOR 1.f); a credit card debt from 2010 for \$4,919.71 (SOR 1.g); and an unpaid state tax debt for \$657 (SOR 1.h). The total delinquent debt is \$76,265.

Applicant and his wife purchased a home, but their incomes were insufficient to pay their mortgage. The house was listed for foreclosure after a mortgage loan default about September 21, 2010. Applicant filed a Chapter 13 bankruptcy in December 2010 listing his mortgage, credit cards, and tax debts. His assets were listed as \$358,390, with debts of \$480,297. Applicant's bankruptcy payment was to be \$400 monthly commencing in January 2011. In April 2011, Applicant's mortgage holder was permitted to repossess the house and foreclose. The mortgage holder is prohibited from collecting a deficiency balance on the primary mortgage but can file for default on the second mortgage. This debt is included in the SOR. (Item 8)

On July 27, 2011, Applicant agreed to an amended bankruptcy debtor payment plan of \$400 for 24 months, \$750 per month for 18 months, and \$1,050 per month for the remaining 18 months of payments. On August 13, 2012, a default notice was issued showing Applicant was \$1,000 behind on his Chapter 13 payments. Applicant brought the payment plan current on August 30, 2012. (Item 4)

It appears from the record that Applicant has filed both his federal and state tax returns. However, he owes both federal and state taxes. Applicant claims he is on a payment plan for his IRS debt. He did not submit information to show payments made on the plan. Applicant claims he will pay his past due state taxes in 2013. He did not present any proof of payment on his state tax debt. (Item 4)

Applicant indicated that he received financial counseling when he filed his Chapter 13 petition. He did not present information to verify such counseling. He indicated he attempted to sell his house at a short sale before foreclosure. He did not present any information to verify such an attempt.

### **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 delinquent mortgage loan, credit card debts, and tax debts listed in credit reports, 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 delinquent debt shows a history of both an inability and unwillingness to the debt.

The Government produced substantial evidence 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 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); and 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 do not apply.

Applicant has been steadily employed since 1994, except for a four-month period in 2006. He purchased a home with a mortgage loan he could not afford. He was unable to make his mortgage payments, so he filed a Chapter 13 bankruptcy. Applicant also had credit card and state and federal tax debts included in the bankruptcy. His house was foreclosed and Applicant was discharged of the primary mortgage but not the second mortgage. Applicant has been inconsistent in payment of his bankruptcy debtor's plan. He signed an amended plan in July 2011 increasing his required payments from \$400 monthly to \$750 monthly and then to \$1,050 monthly. Applicant has already defaulted once on his payment plan when only \$400 was the monthly payment. His personal financial statement does not show sufficient income to meet either the increase to \$750 or to \$1,050. Applicant has not presented any information to establish how he can continue to make his bankruptcy payments in the future. He does not appear to have a reasonable means of making payments on the bankruptcy plan that would mitigate the financial considerations security concerns. He presented no information of any efforts to modify or change his life style so as to lessen his expenses so he could meet his increased obligations. 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.

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 states that he received counseling before filing his Chapter 13 bankruptcy. However, he presented no information to indicate the counseling, and 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 has undoubtedly made some payments under his Chapter 13 bankruptcy plan. His payments have been inconsistent and he has not presented sufficient evidence to show that he has adequate income to meet the increased demands of his bankruptcy payments. His personal financial statement does not show he has sufficient income to

meet his financial obligations in spite of many years of steady employment. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to establish an ability to make bankruptcy payments, Applicant has not acted responsibly. 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 he acted reasonably and responsibly to address his delinquent mortgage loan and resolve his financial problems. He has not shown he has sufficient income to meet his increased bankruptcy payments. 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 -1h:                      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