



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



In the matter of: )  
)  
) ISCR Case No. 12-01658  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

01/24/2014

**Decision**

MASON Paul J., Administrative Judge:

A poor real estate market since 2008 has hampered Applicant's efforts to sell his home or negotiate a home modification loan with his mortgage company. The inability to charge enough rent to cover the monthly mortgage between 2008 and 2010 was another unforeseen occurrence. His involuntary separation from the United States Air Force in June 2010, presented employment problems until his hire in May 2011. However, Applicant received severance pay in July 2010 and unemployment compensation until he found employment. Because he presented no documentation to support his claims of satisfying any delinquent accounts that he accumulated since 2008, Applicant has not met his ultimate burden of persuasion under the financial considerations guideline. Eligibility for access to classified information is denied.

## **Statement of the Case**

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on November 26, 2011. He was interviewed by an investigator from the Office of Personnel Management (OPM) on December 20, 2011. The November 26, 2011 interview summary and Applicant's interrogatory responses appear in GE 2 (unsigned). In GE 3, containing Applicant's November 26, 2011 interview, he supplied interrogatory responses. The exhibit was signed and notarized by Applicant on June 18, 2013. Applicant agreed that the summary could be admitted into evidence at a hearing to determine his security suitability. (GE 3)

On July 18, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on August 15, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 30, 2013, for a hearing on October 24, 2013. The hearing was held as scheduled. GE 1-GE 5 were admitted into evidence without objection. Applicant testified. He submitted no exhibits. The transcript (Tr.) was received on October 30, 2013.

## **Findings of Fact**

The SOR lists 22 delinquent debts and one judgment under the financial considerations guideline. Applicant admitted all factual allegations and provided extenuating reasons for the delinquent accounts. His answers to the SOR will become a part of the following factual findings.

Applicant, 36 years old, was married in October 2002. He has been separated since July 2013, and retained counsel to file a divorce. About two-thirds of the retainer was paid by his family. He has three children, ages 9, 7, and 21 months. In 2000, he received his bachelor's degree in geography. Since July 2005, he has been taking online courses toward a master's degree in business administration. In July 2010, Applicant, with ten years of service in the United States Air Force (USAF), was involuntarily separated after being passed over for promotion on two occasions. He also suspected the USAF overall reduction-in-force was another reason for his separation. He was unemployed from July 2010 to May 2011, when he was hired at a reduced salary as an operations analyst by a defense contractor. He has held a security clearance since October 2001.

In 2006, Applicant was a captain in the USAF, stationed in the northern United States and earning between \$4,000 and \$4,500 a month. He purchased and moved into a home at a USAF base in the central part of the United States expecting to stay more than four years. In May 2008, after a neighbor sexually assaulted his two-year-old child, his wife could no longer live in the home. He was granted a compassionate transfer request in June or July 2008, and moved to a USAF facility in the western part of the United States. Because of a depressed real estate market, Applicant was unable to sell his home after he moved. He rented the home from June 2008 until early 2010, however, the rent for the period was \$150 less than the monthly mortgage. (GE 2 at 4; Tr. 27-29)

Applicant tried to reduce his home mortgage. To satisfy for a home modification agreement (HMA), he followed his home mortgage company's recommendation to stop paying the mortgage for three months. He tried three times to satisfy the mortgage company's recommendations to get an HMA, but was unsuccessful. He stopped making mortgage payments in 2009 or 2010, and "abandoned" the property after he was separated from the USAF in July 2010. At the hearing, Applicant indicated he was still challenging the mortgage company's ongoing effort to illegally foreclose on the property rather than negotiating a lower mortgage. No documentation was submitted to support his hearing claims. (GE 2 at 4, 6; Tr. 24-25, 36)

Applicant received \$60,000 (\$40,000 after taxes) as severance pay when he was separated from the USAF in July 2010. He and his wife moved to the eastern part of the United States and lived with his mother-in-law from June to August 2010. He paid no rent, but contributed approximately \$500 a month. From September 2010 to May 2011, he lived with another family member and paid about \$1,200 a month. He moved several more times and currently lives with his three children at his parents' home. He separated from his wife in July 2013. (Tr. 36-44)

In addition to severance pay, Applicant began receiving about \$1,600 a month in unemployment compensation during his unemployment in 2010 and 2011. Regarding his severance pay, he indicated someone stole his wife's debit card and made several large unauthorized purchases of items and gasoline between July and October 2010. Applicant estimated that 35 to 60% of his severance pay was used for these illegal purchases. No action was taken by his bank, issuer of the debit card, because he could not prove the debit card had been illegally misused. The bank found that the amount spent was within the amount that Applicant and his wife would normally spend. Applicant did not agree with the bank's finding. (Tr. 70-88)

At the end of 2010 or the beginning of 2011, Applicant's wife noticed that her limbs were shaking involuntarily. She was given several types of medication to control the mysterious condition. In a three-month period, she became addicted to the medication and her behavior became peculiar. After she began disappearing for large amounts of time and

informed him that her cousins stole her check card to obtain money, he decided to separate in July 2013, and resumed control of the finances. The record is silent as to whether the earlier theft of his wife's debit card is related to the theft of her check card. Applicant claimed he recently started paying off the delinquent debts. (Tr. 26, 81-86)

The total amount of indebtedness for the 22 listed delinquent accounts and one judgment is \$159,194. The largest delinquent account is a mortgage. The other past-due accounts represent utilities, cellular phones, a medical bill, credit cards, and loans. The judgment became delinquent in October 2008. Four other listed debts became delinquent in 2008, and the remainder became delinquent between 2009 and September 2012. Applicant opened a cable account (SOR 1.a) in 2011 while he was unemployed. The account became delinquent in July 2011. He also has other unlisted accounts. He is making monthly payments of \$100 on an unlisted loan. He has a payday loan that he opened at the end of 2012. When he submitted his answer to the SOR, he intended to file bankruptcy, but changed his mind because he has been able to direct more money toward delinquent bills. During the financial counseling Applicant received many years ago, he indicated he learned how to successfully execute a plan for paying off small debts. (GE 4, 5, 6; Tr. 66-70, 88)

Applicant has not taken any documented action on the delinquent accounts listed in the SOR. He claimed he had made seven months of payments to rehabilitate his student loans (SOR 1.i, 1.m), but provided no documentary proof from his debit card. He provided no documentation supporting his claim of trying to pay smaller debts first before taking on the larger accounts. In response to the question of whether he had documentation of why a repossession action had not been taken against him by the creditor identified in SOR 1.n (car purchased in 2008), he stated that the car had not been repossessed because of a statute preventing this kind of legal action against a veteran until he regains his financial footing. He also stated, "From all my movement, moving that I've done, and about 80% of my possessions are in storage right now, I don't have all my documents." (Tr. 69) This is the same explanation he supplied to the OPM investigator in December 2011, when he was asked about the listed delinquent accounts. He has not made a payment on the car in close to a year. (GE 2 at 4-5; Tr. 46, 56-57, 69, 76)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such

decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth in AG ¶ 18:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The SOR identifies 23 accounts totaling more than \$159,000. Applicant has a history of not meeting financial obligations that extend from 2008 through September 2012. He claimed he paid some smaller unlisted debts, but he has provided no documentary proof. AG ¶¶ 19(a) and 19(c) are applicable.

The mitigating conditions under AG ¶ 20 that are potentially pertinent:

- (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 reliability, trustworthiness, and good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant began accumulating delinquent debt in March 2008. A judgment was entered against him in October 2008. When the SOR was mailed to Applicant in July 2013, he owed more than \$159,000 to 23 creditors. Opening a cable account in 2011 while unemployed, and receiving two additional loans raise ongoing doubt about Applicant's judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Several circumstances largely beyond Applicant's control resulted in his financial problems. His inability to sell his home or negotiate a home modification agreement was a primary reason. However, I am unable to weigh the level of Applicant's efforts to resolve the home dilemma without some documentation to substantiate his testimonial claims, and because he informed the OPM investigator in December 2011 that he had abandoned the property.

His involuntary separation from the USAF caused uncertainty in his life. However, in July 2010, he received \$40,000 (after taxes) in severance pay and \$1,600 a month unemployment compensation to ease his transition into civilian life while he looked for a job. There is no documentation to confirm Applicant's claim that his wife's debit card was stolen and used to purchase up to 60% in illegal purchases between July and October 2010. The bank that issued the debit card conducted an investigation and concluded that the amount spent was within the normal range of Applicant's expenditures. Applicant's other claims about his estranged wife's peculiar conduct and her stolen check card are undocumented and lack credibility.

To receive full mitigation under AG ¶ 20(b), an applicant must show there were conditions largely beyond his control, and that he "acted responsibly under the circumstances." Therefore, an applicant should provide substantiating evidence to demonstrate a responsible response to delinquent accounts. The record contains no independent evidence to support Applicant's claim that he paid some of the smaller delinquent debts. AG ¶ 20(b) has only limited application.

Applicant testified that many years ago financial counseling taught him to pay his smaller debts first. Though he claimed he paid off some of the smaller unlisted debts, the record lacks verification that any accounts were paid. There is no indication that Applicant is making a good-faith effort to resolve his delinquent debt or bring them under control. AG ¶¶ 20(c) 20(d) do not apply.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

AG ¶ two(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 the participation was 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 a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 36 years old. He has three children. In 2000, he received a bachelor's degree in geography and is taking online course material in anticipation of receiving a master's degree in business administration in the future. He served ten years in the USAF before being involuntarily separated in 2010. He has been employed as an operations manager since May 2011.

The SOR identifies 23 delinquent accounts totaling over \$159,000. Applicant was about 31 years old in 2008 when his financial accounts started to fall delinquent. He was unable to sell his home in 2008 after moving to the western part of the United States. He found a renter, but the rent was \$150 less than the monthly mortgage. Though Applicant was unemployed for at least 10 months following his involuntary separation in July 2010, the USAF provided him with severance pay. In addition, he received \$1,600 a month in unemployment compensation.

Applicant has been employed since May 2011. Even though he probably knew about his delinquent accounts before he was interviewed in December 2011, he was made aware

in the interview that his financial delinquencies were a concern to the Government. In July 2013, he was officially put on notice of the 23 delinquent accounts listed in the SOR. Yet, he presented no documented proof of satisfying any of the listed or unlisted accounts. Opening a listed cable account in 2011 while unemployed and two unlisted loan accounts in 2012 despite ongoing financial problems, demonstrates serious poor judgment and trustworthiness. Having weighed the totality of the evidence in the context of the whole-person factors, Applicant has not mitigated the security concerns under the financial considerations guideline.

### **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-w:                      Against Applicant

### **Conclusion**

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

Paul J. Mason  
Administrative Judge