



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 12-04260  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

03/12/2014

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, Applicant has mitigated security concerns for financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 5, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to update a security clearance required for a position with a defense contractor. Applicant had previously been granted eligibility for access to classified information based on a security clearance application submitted on April 12, 2000. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated October 24, 2013, detailing security concerns for financial considerations under Guideline F. The action was taken 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on December 16, 2013. He admitted the one delinquent mortgage debt listed in the SOR, but provided an explanation why the mortgage debt was delinquent. Department Counsel was prepared to proceed on January 28, 2014, and the case was assigned to me on January 25, 2014. DOD issued a Notice of Hearing on February 18, 2014, scheduling a hearing for February 26, 2014. I convened the hearing as scheduled. Applicant waived the required 15-day notice. The Government offered six exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant offered 21 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through U. I received the transcript of the hearing (Tr.) on March 6, 2014.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 66 years old and has been a senior program manager for a defense contractor for approximately 14 years. Applicant served on active duty in the Navy from 1967 until 1971, and was honorably discharged as a petty officer third class (E-4). He worked in a family business after his discharge for ten years before starting to work in engineering for a defense contractor. He worked for various defense contractors until working for his present employer starting in July 1999. He has been eligible for access to classified information since 2000. He was married from June 1983 until March 2005, and has two adult daughters. (Tr. 43-49; Gov. Ex. 1, e-QIP, dated January 5, 2012) His net monthly salary is \$7,684.14, with monthly expenses of approximately \$6,100, leaving a monthly remainder of approximately \$1,500. (Tr. 55-60; Gov. Ex. 3, Personal Financial Statement, at 11)

The SOR alleges one delinquent mortgage debt past due in the approximate amount of \$50,000. The account is in foreclosure status with a total loan balance of approximately \$250,000. Credit reports (Gov. Ex. 5, dated August 1, 2013; and Gov. Ex. 6, dated January 27, 2012), and Applicant's admission (Response to SOR, dated December 16, 2013), establish the delinquent debt.

Applicant purchased a new condominium on April 4, 2006. Since it was a new property, he received a ten-year property tax abatement. His monthly mortgage payments were approximately \$1,911. He was current with his payments through January 2011. In January 2011, he received his 2011 payment coupon book from the mortgage company. The monthly mortgage payments increased to over \$3,000. Applicant called the mortgage company for an explanation but was told that the company would have to research the account to determine the reasons for the increase. The issue was still not resolved by the beginning of February 2011, so Applicant made his February 2011 payment at the increased amount. He continued to seek an

explanation from the mortgage company. He was initially told just to pay the amount due on the notice.

Applicant pressed for an explanation and talked to many mortgage company employees in a least three different departments. He had not received an explanation when the March 2011 payment was due, so he made the original \$1,911 payment. The mortgage company informed him that a partial payment could not be received so they placed his payment in a "suspense" file. He continued not to receive an explanation, so he made the original \$1,911 payment for April and May 2011. He again received a response that a partial payment could not be credited to his account and would be placed in a suspense file. In May 2011, Applicant was told the increase was because he owed property taxes. He again sent the mortgage company information from the local government confirming the tax abatement effective through April 2016.

Applicant was unsure that he was receiving credit for his payment of the mortgage. He stopped sending the mortgage company payments in June 2011. Instead, he set aside and placed the funds in an account to be used when there was an agreement with the mortgage company. He continued his telephonic and written correspondence with the mortgage company requesting an explanation for the increase. Many times, he did not receive a reply and often he was told just to pay the amount due. In April 2012, he was so frustrated with dealing with the mortgage company that he became sick and hospitalized. He feared that the mortgage company could foreclose on the property, issue a foreclosure notice, and lock him out of the house. He hired an attorney to represent him. The mortgage company issued a foreclosure action and Applicant's attorney answered the complaint and filed a counterclaim. The condominium has not been foreclosed, and the issue is in active litigation. (Tr. 33-43, 55-61; App. Ex. A, Attorney Letter, dated February 18, 2014; App. Ex. B, Answer and counterclaim, dated September 4, 2013)

Applicant has set aside more than sufficient funds to pay the mortgage company when the issue is resolved. Applicant believes the correct amount owed is \$54,188.86. The mortgage company believes the amount owed is in excess of \$75,000. (Tr. 30; App. Ex. R, Mortgage Statement with annotations, dated January 16, 2014) Applicant has over \$100,000 set aside to pay the debt. (Tr. 41-42, 53-55; App. Ex. H through K, Bank Statements, dated February 24, 2014; App. Ex. M and O, Money Market Account Statements, dated January 10, 2014) The funds set aside also consist of \$10,000 in cash held by a friend for immediate use to pay the debt. (Tr. 21; App. Ex. G, Letter, dated February 18, 2014; App. Ex. L, Check, dated July 19, 2013)

Applicant provided letters of recommendation and reference. His supervisor for over ten years wrote that Applicant is dependable and enthusiastic about his work. He informed the supervisor of his problems with the mortgage company and the actions he was taking to resolve the dispute. During this time, he kept his work at a high level. (App. Ex. C, letter, dated February 12, 2014) A fellow worker for over 25 years wrote that Applicant is loyal, knowledgeable, conscientious, and dependable. He is aware of Applicant's mortgage problems and has offered advice and counsel to Applicant. (App. Ex. D, Letter, dated February 11, 2014) A co-worker for over 13 years, who hired

Applicant for his present position, wrote that Applicant always provided outstanding support and maintained a high level of professional ethics. (App. Ex. E, Letter, dated February 17, 2014) A friend and former fellow employee wrote that she has known Applicant for over 26 years. Applicant has a reputation for reliability, dependability, and trustworthiness. She is aware of his mortgage issues and his efforts to try to resolve the problems with the mortgage company. (App. Ex. F, Letter, dated February 10, 2014) Another friend, who is the holder of the \$10,000 in cash, wrote that she has known Applicant for over four years. She was present when Applicant made numerous calls to the mortgage company to try to resolve the issues. She knows that all of his debts are timely paid and that Applicant has set aside funds to make mortgage payments when the issues are resolved. She is also aware that Applicant became ill and required hospitalization because of stress caused by the issues with the mortgage company. (App. Ex. G, Letter, dated February 18, 2014)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's self-responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 at risk and 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.

Credit reports and Applicant's admissions show a mortgage debt that has been delinquent since 2011. Applicant admits the debt. The delinquent debt raises Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence shows a history of a potential unwillingness to satisfy the debt.

I considered Financial Considerations Mitigating Conditions 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); and AG ¶ 20(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). These mitigating conditions apply

Applicant obtained a mortgage on a new condominium in April 2006. He also received a ten-year property tax abatement on the property. The mortgage company sent him payment coupons, and Applicant made his \$1,911 monthly mortgage payments on time. In January 2011, Applicant received his payment coupon book from the mortgage company for 2011 that reflected a marked increase in the mortgage payments to over \$3,000. Applicant inquired and was told by the mortgage company that the increase was because Applicant owed property taxes. Applicant again advised the mortgage company of the tax abatement but was told just to pay the amount they requested. He paid the requested amount for one month and continued to request clarification of the amount owed. He did not receive a valid response from the mortgage company, so he made only the original mortgage payments for March, April, and May 2011. The mortgage company did not accept the payments as satisfaction of his mortgage and placed the funds in a separate account. Since Applicant was not sure he was being credited with payments, he ceased making payment in June 2011. He placed the amount of the original mortgage payment in an account. He continued to try to resolve the issue with the mortgage company but was not successful. In March 2012, Applicant hired an attorney and filed a legal action and counter claim against the mortgage company. He has continued to set aside funds, and he has sufficient funds to pay the approximately \$54,000 he believes he owes as well as the approximately \$75,000 the mortgage company believes he owes.

There is only one debt of security concern, so Applicant's financial problems are not frequent. The financial condition leading to the debt was caused by the mortgage company's increase of his mortgage bill without justification. The mortgage company refused to consider amending the amount owed based on the tax abatement. The condition that caused the increase debt was unusual and beyond his control. Since Applicant's only debt is the unpaid mortgage which is the subject of legal action, it is unlikely to recur. Applicant had a legitimate and reasonable basis to dispute the debt. The increased mortgage payment was based on a property tax which Applicant established was abated. While Applicant could have paid the amount requested by the mortgage company, he rightfully refused to pay the increased amount. Applicant acted reasonably and responsibly in attempting to resolve the debt with the mortgage company. He put funds aside to pay the amount when resolved. Applicant and his attorney have filed a legal action and are still actively negotiating with the mortgage company to find a solution. Applicant would have been financially irresponsible if he had paid the amount requested by the mortgage company without assurance that it was the correct amount owed and that he was receiving credit for his payments. There is no evidence of irresponsible behavior, poor judgment, or unreliable conduct by Applicant.

While normally promises to pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible way, Applicant's actions to settle the debt are more than a mere promise to pay in the future. He acted proactively and set aside the funds to pay a settlement, thus establishing the ability to have a "meaningful track record" of debt payment. His actions

on the debt are reasonable, prudent, and an honest adherence to his financial obligations. His present and past management of his finances reflects favorably on his trustworthiness, honesty, and good judgment. Based on all of the financial information available, to include Applicant's continued action on the debt, I conclude that Applicant mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a security clearance 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 Applicant 4 years of Navy service and over 30 years of excellent service to defense contractors while having eligibility for access to classified information. I considered the opinions of his supervisors and friends as to his hard work, honest, integrity, and devotion to duty.

Applicant presented sufficient information to establish that he acted reasonably and responsibly towards the one delinquent debt. He continued to try to negotiate with the mortgage company on the debt until he had to hire an attorney and file a legal action. He set aside sufficient funds to pay his mortgage debt once it is resolved. As noted, Applicant is not required to be debt-free or pay off all debt immediately. All that is required is that he acted responsibly under the circumstances, develop a reasonable plan to repay the debt, and show a serious intent to effectuate the plan.

In this whole affair, Applicant appears to be the only person that acted responsibly towards the debt. The mortgage company was not reasonable resolving the debt. It did not always return calls or correspondence from Applicant. Applicant had to hire an attorney to file a legal action to resolve the situation. He would be acting irresponsibly and unreasonably if he merely paid the debt without an assurance of the amount owed and that he would be credited with any payments. He took reasonable action to set aside funds to pay the debt when resolved. In sum, Applicant has taken

reasonable action to resolve the debt and maintain his financial responsibility. His past financial track record provides confidence that he will continue to resolve the debt and will be ready to make payments on the debt. His responsible management of his financial obligations indicates he will be concerned and act responsibly in regard to classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and his eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge