



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00843

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2017

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to show that he has a track record of financial responsibility, and that his financial problems are under control. He failed to mitigate the Guideline F (financial considerations) security concerns. He mitigated the Guideline E (personal conduct) security concerns. Clearance is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on June 26, 2014. On March 2, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).<sup>1</sup> Applicant answered the SOR on March 25, 2016, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM) (containing the evidence in support of the denial), was provided to Applicant by transmittal letter dated

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<sup>1</sup> 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.

May 26, 2016. Applicant received the FORM on June 1, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant submitted a one-paragraph answer in response to the FORM (prepared on June 20, 2016) that was received by the Defense Office of Hearings and Appeals (DOHA) on an unspecified day. The case was assigned to me on April 7, 2017.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government investigator from August 7, 2014. Applicant was informed he could object to the summary of his interview, and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver, and I would consider the evidence. In his response to the FORM, Applicant did not object to me considering the summary of his interview. I admitted the document and considered it.

### **Findings of Fact**

In Applicant's response, he admitted all the SOR factual allegations. However, he denied that he deliberately falsified his 2014 SCA when he explained that he misunderstood the questions. I considered SOR ¶¶ 2.a and 2.b denied. His SOR and answer to the FORM admissions are incorporated into my findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 36 years old and a high school graduate, class of 1998. He married his wife in 2007, and as of his 2014 SCA, they had no children. Applicant's work history shows he worked as a telecommunications installer between 2003 and 2005; was unemployed between May and October 2005; and worked as a carpenter for a private company between 2005 and 2008. Applicant was self-employed as a carpenter from 2008 to 2014, and started working full time as a ship fitter for his current employer, a defense contractor, in June 2014. This is his first SCA.

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had financial problems that included a 2013 delinquent medical debt, totaling \$2,000, resulting from his lack of income. He stated his financial problems started in 2013, and implied that he was working on establishing payment plans with creditors to resolve his delinquent debts. During his August 2014 interview with a government investigator, Applicant professed his intent to pay this debt, but indicated he had been unable to do so due to insufficient income.

Section 26 also asked Applicant whether (1) in the last seven years he had failed to file or pay federal, state, or other taxes when required by law; and (2) he was currently delinquent on any federal debt. Applicant answered "no" to both questions and failed to disclose that he was indebted to the IRS for delinquent taxes for tax year 2012

for \$12,197; and for tax year 2013 for \$13,620. During his August 2014 interview, Applicant explained that when he was self-employed he failed to set aside a portion of his income to pay taxes and accrued the debt. He claimed he was in the process of attempting to set up a payment plan with the IRS.

In his SOR response, Applicant explained that he misunderstood both questions. He stated that he never failed to file his income tax returns (with respect to question (1) – and there is no evidence to the contrary), and that he believed that the second question (2) with the heading of “Delinquency Involving Enforcement” required some sort of law enforcement involvement as a prerequisite for its disclosure.

In his response to the FORM, Applicant stated that he had recently opened a checking account dedicated to pay back the IRS, and that the day after his response (June 21, 2016), he would start depositing a portion of his pay check in that account. He also promised to contact the IRS within 14 days of his FORM response. He wanted to wait the 14 days to ensure he had sufficient money in his account to make the first payment.

Applicant explained that he wanted to start paying his delinquent taxes earlier, but his wife was suffering from a rare disease and her treatment cost them about \$550 twice a month and the medical expenses had extinguished the funds he was planning to use to pay the IRS. Applicant did not establish when his wife was diagnosed with the disease.

Applicant presented no documentary evidence to show that he has been in contact with the IRS, or that he attempted to settle, pay, or resolve his delinquent debts. He promised during his August 2014 interview, and in his FORM response, to contact his creditors and establish payment plans to resolve his debts. He failed to submit any documentary evidence of his efforts to pay or resolve his delinquent debts.

Applicant professed to be living within his financial means, and described himself as doing very well now that he was working for a federal contractor. He presented no evidence to show he has attended a financial counseling course or that he maintains a budget. Applicant submitted no documentary evidence about his monthly income, living expenses, and debts. It is not clear whether Applicant’s financial situation is stable and his income is sufficient to pay his living expenses and debts.

## **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**

### **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)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's history of financial problems is documented in his 2014 SCA, his 2014 interview, his 2016 SOR response, and his 2016 answer to the FORM. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are recent and ongoing. He presented insufficient evidence to show that his financial problems are under control, or that his debts were incurred under circumstances unlikely to recur. He initially claimed his debts resulted from his insufficient income. He later stated that some of his financial problems were caused or aggravated by his wife's medical condition and related expenses. However, Applicant presented insufficient information to establish circumstances beyond his control and that he was financially responsible under the circumstances.

Applicant presented no evidence of efforts taken to remain in contact with his creditors, or of efforts he has taken to pay or resolve his delinquent debts even after his August 2014 interview with a government investigator. Applicant was made aware of the Government's financial considerations security concerns when he completed his 2014 SCA, during his August 2014 interview, when he received the SOR, and when he was provided the FORM. He was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. He failed to provide any documentary evidence to show he has been in contact with his creditors, or that he attempted to settle or pay his delinquent debts since he acquired them.

#### **Guideline E, Personal Conduct**

AG ¶ 15 articulates the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant omitted relevant and material information from his 2014 SCA when he failed to disclose that he failed to pay his income taxes for tax year 2012 and 2013, and that when he submitted his 2014 SCA he was delinquent on close to \$25,000 to the IRS.

Applicant's omissions, if deliberate, would trigger the applicability the following disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Considering the evidence as a whole, including Applicant's age, education, lack of experience working for government contractors, and 2014 statement to a government

investigator, I find that Applicant's omissions were not deliberate or made with the intent to mislead the Government. AG ¶ 16(a) is not applicable.

### **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). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those Guidelines, but some warrant additional comment.

Applicant did not submit sufficient evidence to show his financial responsibility. He submitted no documentary evidence of payments to the IRS or of efforts to resolve his debts. There is insufficient evidence of progress addressing his financial problems. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problems are being resolved, or are under control. Applicant failed to establish that he has a track record of financial responsibility.

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. The financial considerations security concerns are not mitigated.

### **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 and 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge