



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ) ISCR Case No. 15-01137  
 )  
Applicant for Security Clearance )

**Appearances**

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

06/07/2017

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate financial considerations security concerns.

**Statement of the Case**

On November 7, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain and upgrade his security clearance which is required for his employment with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated August 26, 2015, detailing security concerns for financial considerations under Guideline F. The security concern allegation was a bankruptcy that Applicant filed in July 2014 (SOR 1.a). On March 6, 2017, DOD amended the SOR alleging that the bankruptcy was discharged in August 2015, and adding nine allegations of delinquent debt (SOR 1.b – 1.j). 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 allegations on March 6, 2017. He admitted allegation 1.a concerning the bankruptcy but denied the nine allegations of delinquent debt. Department Counsel was prepared to proceed with the original SOR allegation on June 30, 2016. The original case was assigned to me on October 19, 2016. DOD issued a notice of hearing on February 13, 2017, for a hearing on March 8, 2017. The hearing was rescheduled for March 13, 2017. I convened the hearing for the SOR allegations as rescheduled. The Government offered seven exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 to 7. Applicant and one witness testified. Applicant submitted six exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through F. I kept the record open for Applicant to submit additional documents. Applicant timely submitted five additional documents that I marked and admitted into the record without objection as AX G to K. Department Counsel had no objection to consideration of the additional documents. (GX 8. Memorandum dated April 24, 2017) I received the transcript of the hearing (Tr.) on March 20, 2017. The record closed on April 24, 2017, when I received Applicant's additional documents.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 34 years old. He was born in the Dominican Republic, and entered the United States in 1996. He became a United States citizen in April 2006. He served on active duty in the Army from July 1997 until February 1999 when he received a general discharge because of a family hardship. He married a Dominican Republic native in March 1996. She is now a United States citizen. He has four children, three sons and a daughter. All of his children either live at home or are college students being supported by Applicant and his wife. Applicant received an associate's degree in 1996. He has taken additional continuing education or certification courses. (Tr. 27-29; GX 1, e-QIP, dated November 7, 2012)

Applicant has been employed fulltime as a data loss prevention analyst for a contractor with defense related contracts since February 2012. His current yearly salary is \$91,000. Prior to that position, he worked in security for another DOD contractor from 2008 until 2012. He has been employed fulltime since 2008. He received eligibility for access to classified information in 2008 while working with his employer for another government agency. His present yearly income is \$91,000. His net monthly pay is \$5,200. His wife is employed part time, and she contributes approximately \$1,000 monthly to the family income, for a total family income of \$6,200. Their monthly expenses are approximately \$5,400, leaving \$800 monthly in discretionary funds. Applicant applied for and has been offered part time employment to boost his discretionary income. The position requires Applicant to have a higher level of eligibility for access to classified information. (Tr. 21-25, 39-52; AX F, e-mail, dated March 22, 2016)

The SOR alleges that Applicant filed for a Chapter 7 bankruptcy on October 4, 2013. Additional bankruptcy petitions were filed in April and July 2014. (SOR 1.a) The amended SOR alleges, and credit reports (GX 5, dated May 26, 2016; GX 6, dated March 6, 2017) confirm the following delinquent debt for Applicant; an automobile loan for \$24,995 (SOR 1.b); student loans past due more than 180 days in the approximate amount of \$107 on a balance of \$1,812 (SOR 1.c); past due more than \$104 on a balance of \$1,622 (SOR 1.d); past due more than \$155 on a balance of \$2,806 (SOR 1.e); past due more than \$200 on a balance of \$2,300 (SOR 1.f); past due more than \$198 on a balance of \$2,280 (SOR 1.g); past due more than \$127 on a balance of \$1,541 (SOR 1.h); past due more than \$128 on a balance of \$1,542 (SOR 1.i); and a telecommunication debt in collection for \$1,051 (SOR 1.j). The total amount of the debt is \$40,000 of which \$23,000 is delinquent debt.

Applicant's wife lost her job in December 2011. Prior to losing her job, her yearly salary was approximately \$120,000. She just recently gained part time employment. The loss of her income had an adverse effect on the family finances. At the time, she was the primary income producer for the large family. After losing her income, Applicant and his wife contacted their bank seeking a loan modification for their mortgage. Instead of the loan modification, the bank foreclosed on the house. To prevent the foreclosure, Applicant filed a bankruptcy petition. After having problems completing the required bankruptcy documents, Applicant contacted an attorney who assisted them in filing the bankruptcy petition. The attorney testified that after a few false starts, the bankruptcy was correctly filed in October 2014. (GX 2, Bankruptcy Documents) Applicant's debts were discharged in August 2015. His student loans were not discharged as normal in the bankruptcy proceedings. (Tr. 19-21, 25-64-67, AX A, Bankruptcy Discharge, dated April 16, 2015; AX I, Statement, dated March 28, 2017)

Applicant testified that he became the only income producer in the family in 2011. He and his family moved to a house that was not as expensive after his wife lost her job in 2011. Their monthly mortgage payment was reduced from \$2,600 to \$1,750.

Applicant testified that he stopped payment on the car loan (SOR 1.b) in April 2016. In the last year, he only made a \$300 car loan payment in December 2016. The creditor offered to have Applicant bring the loan current for a \$5,000 payment. Applicant would like to pay the past due amount and then refinance the loan. He is anticipating a tax refund and he will use the refund to bring the loan current. In January 2017, he requested that his student loans (SOR 1.c – 1.i) be placed in forbearance. His student loans were deferred until April 2017. After April 1, 2017, he has an arrangement with the student loan creditor to pay \$200 monthly on the student loans. Applicant also testified that he made an arrangement with the telecommunication company for the debt at SOR 1.j and is paying \$51 each month. Applicant could not provide documentation to verify his arrangements with any of his creditors since all of the arrangements with the creditors were verbal. Applicant provided a copy of his family budget. (Tr. 20-23, 29-38; AX K)

Applicant provided a statement at the hearing concerning an arrangement to pay his car loan. The outstanding balance on the loan was \$24,995 with \$5,699 past due.

His monthly payments are \$659. He stated that he and the creditor agreed that Applicant would pay off the past due amount within three months. There would be no repossession, and the normal monthly payments would continue. (AX B, statement, undated) Applicant provided no document from the creditor to verify this arrangement.

After the hearing, Applicant provided an offer from the creditor to settle the debt for \$15,000. Applicant was to pay the settlement by April 18, 2017. Applicant did not provide any evidence of a settlement payment. Applicant provided an additional statement that he and the creditor agreed that he would return the vehicle to the creditor and pay the remainder of \$9,000 within 18 months starting on May 21, 2017. Applicant did not provide a statement from the creditor verifying the agreement or a receipt for the required May 21, 2017 payment. (AX G, Applicant's Statement, dated April 20, 2017; AX H. Settlement Offer, dated April 17, 2017)

Applicant noted at the hearing that he was unable to make payments on the student loans starting in April 2016. In January 2017, he requested a forbearance of the student loans for hardship reasons. The student loan payments were deferred for three months until April 2017. He would then make monthly \$200 payments. (Tr. 36-37; AX E, Letter, dated February 20, 2017) In his post hearing submission, Applicant stated that his student loans were in good standing. (AX G, Statement dated April 20, 2017) However, the statement he provide from federal student loan servicing shows that the last student loan payment was received on November 11, 2010, and there were past due balances and interest. A payment was due on April 15, 2017. Applicant did not provide evidence of payment on the student loans. (AX J, Monthly Bill, dated March 25, 2017)

Applicant agrees he has a telecommunication debt of approximately \$1,000 (SOR 1.j). He submitted a document showing that he made a \$55.15 payment on the debt on March 10, 2017. His bank statement reflects the payment. As part of the agreement, Applicant was to continue to pay \$100 monthly to satisfy the debt. (Tr. 37-38) In his post hearing submission, Applicant noted that the debt was sold to a collection agency which offered to settle the debt for \$450. Applicant stated the payment was to be deducted from his bank account on April 28 settlement agreement or a receipt for the payment. (AX G, Statement, dated April 20, 2017)

## **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 a person’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial 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 responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. 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 meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant filed a bankruptcy petition in 2014 and his debts were discharged in 2015. Student loans were not discharged. He experienced additional delinquent debt after the discharge. Applicant's history of delinquent debts is documented in his credit reports and in his admissions. The information raises an issue about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

Applicant's delinquent debts raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

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

I considered the following Financial Considerations Mitigating Conditions under 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;
- (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; and
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Mitigating condition AG ¶ 20(a) does not apply. Applicant's debts are numerous, recent, and not incurred under circumstances making recurrence unlikely. He sought a car loan that went delinquent and had a delinquent telecommunication debt after a

bankruptcy discharge. The financing of education using student loans that remained from the bankruptcy discharge is not an unusual circumstance or beyond his control.

Mitigating condition AG ¶ 20(b) applies in part. Applicant's wife losing her job was a circumstance beyond his control. However, Applicant was fully employed from 2008 at a good salary. Applicant tried to lower his expenses by moving to a less costly rental. He filed a bankruptcy petition in 2014. He used bankruptcy as a legal and permissible means of resolving debt. His debts were discharged in 2015 except for student loans. He accumulated additional debt after the discharge that became delinquent. Applicant failed to present sufficient documentation that he acted reasonably and responsibly to resolve his debts.

Mitigating condition AG ¶ 20(c) does not apply. Applicant received financial counseling as a condition of filing bankruptcy. However, he has unresolved delinquent debt so his financial situation is not under control.

Mitigating condition AG ¶ 20(d) does not apply. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must evidence a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant claims he is now paying his student loans and has payment plans for his car loan and telecommunication debt. However, he presented no credible documentation to establish that these are agreed plans by the creditors and that payments under the plan are being made. His promise to make payments in the future is not a substitute for a meaningful track record of debt payment. He has not established a sufficient track record of paying his debts in a timely manner and acting in a financially responsible manner. His lack of responsible financial conduct is likely to continue. There is evidence of a lack of responsible behavior, good judgment, and reliable conduct and actions by Applicant towards his finances. In short, the file lacks sufficient evidence that Applicant made arrangements to pay, settle, compromise, dispute, or otherwise resolve any of the delinquent accounts. The record lacks corroborating or substantiating documents and detailed explanations of the mitigating information.

Applicant has not met his burden to establish that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. With evidence of delinquent debt and insufficient documentation to support responsible management of his finances, it is obvious that Applicant's financial

problems are not under control, and that Applicant is not managing his personal financial obligations reasonably and responsibly. His financial problems are not behind him. Applicant's failure to act reasonably and responsibly towards his finances is an indication that he may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for 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 that Applicant served two years on active duty in the Army. Applicant incurred delinquent debt when he lost the ability to count on his wife's income. While he used a legal and permissible means of resolving some of his debts, he accumulated more delinquent debt after the bankruptcy. He has not established an adequate plan to resolve his remaining delinquent debts. Applicant has not presented sufficient information to establish that he acted reasonably and responsibly towards his finances under the circumstances. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. 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

Subparagraph 1.a:                   For Applicant

Subparagraphs 1.b – 1.j           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 a security clearance. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge