



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



In the matter of:

ISCR Case No. 15-01499

Applicant for Security Clearance

**Appearances**

For Government: Ross Hymans, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2016

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant provided sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 2, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 15, 2014. (Item 5) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 11, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing 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 answered the SOR on November 4, 2015. He admitted one (SOR 1.d) and denied four financial allegations of delinquent debt. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on March 17, 2016. Applicant received a complete file of relevant material (FORM) on March 29, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 9) I was assigned the case on September 27, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 5) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. In his response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

### **Findings of Fact**

After a thorough review of the case file. I make the following findings of fact. Applicant is a 42-year-old 1992 high school graduate who has some college credits. He married in December 2004, separated in November 2013, and has one child. He was a mapping technician from October 1992 until December 2010. He was self-employed in real estate investment from March 2008 while still working as a mapping technician until June 2014. In June 2014, he started employment as a systems technician for the DOD contractor that is sponsoring him for a security clearance. This appears to be his first application seeking eligibility for access to classified information. (Item 4, e-QIP, dated June 2, 2014; Item 5, PSI, dated September 15, 2014)

The SOR alleges and credit reports (Item 6, dated September 14, 2013; Item 7, July 24, 2014; and item 8, dated August 27, 2015) confirm the following delinquent debts for Applicant; a mortgage with a deficiency balance of \$121,602 (SOR 1.a); a mortgage with a deficiency balance of \$71,871 (SOR 1.b); a credit card debt in collection for \$2,139 (SOR 1.c); a credit card in collection for \$1,733 (SOR 1.d); and a medical debt in collection for \$526 (SOR 1.e). Applicant contends that the debts alleged in SOR 1.c and 1.d are duplicates. He reported the five delinquent debts on his e-QIP. The total amount of the delinquent debt in the SOR is \$197,871. Two mortgage

foreclosures constitute \$193,473 of the debt, and the remaining \$4,398 is for the other three debts.

Applicant purchased four houses to use as rental property when he was a self-employed real estate agent from March 2008 until June 2014. He sold two of the houses, but he was unable to rent or sell the other two houses. In September 2012, he and his wife decided that financially for the family their best action was to let the houses go to foreclosure. In his response to the SOR, Applicant included information from the mortgagor showing that the two loans were closed with a zero balance, and no balance is due. (Item 3, Response to SOR, Letter, dated October 28, 2015)

In 2012 when he was experiencing financial issues from his investment real estate, his wife was providing the majority of the family income. They had two small children and could not make the payments for medical and credit card bills. Applicant made payments on the credit card debt but the payments were not sufficient or timely to meet the requirements of the debts. The debts were placed in collection. SOR 1.c is the credit card debt and SOR 1.d is the same debt but for the collection agency. (SOR 1.c and 1.d) He provided documents in his response to the FORM that the debt to the collection agency is being paid. Applicant provided documents in response to the FORM that the medical debt in SOR 1.e has been paid.

### **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. (AG ¶ 18) 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 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.

Applicant listed his delinquent debts when completing his application for a security clearance. He acknowledged the debts to the security investigator. Credit reports confirm the debts. The evidence is sufficient to raise security concerns under 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 information raises issues 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.

I considered the following Financial Consideration 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 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;

(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.

The mitigating conditions at AG ¶¶ 20(a), (b), apply. Applicant incurred delinquent debt because of a business loss from his inability in the market place in 2012 to sell or rent two houses he purchased as investment properties. These events were caused by conditions largely beyond his control. Applicant acted responsibly by having the properties foreclosed resulting in no debt owed on the properties. His other debts accrued because his wife alone was providing the majority of the family income. He acted reasonably by paying off all but one of the debts, and continuing to make payments on that debt.

Applicant did not report receiving financial counseling. However, there are clear indications that his financial problems have been resolved and his finances are under control. AG ¶ 20(c) applies.

AG ¶20(d) applies. Applicant established a good-faith effort to pay his financial obligations. For a good-faith effort, there must be an ability to pay financial obligations, the desire to pay them, and evidence of a good-faith effort to pay or resolve the obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling financial obligations is needed. Applicant must establish a meaningful track record of payment of financial obligations. A meaningful track record of payment can be established by evidence of actual payments or reduction of obligation through payments of debts. A promise to pay financial obligations is not a substitute for a track record of meeting obligations in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant presented sufficient evidence that the debts at SOR 1.a, 1.b, and 1.e have been resolved. The debts at SOR 1.c and 1.d are duplicates and he is making payments on the debt. Applicant has shown that he acted reasonably and responsibly in

regard to his financial obligations, and his financial problems are under control. His reasonable and responsible action towards his finances is a strong indication that he will protect and safeguard classified information. Applicant presented sufficient information to mitigate financial considerations security concerns.

### **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 provided sufficient credible documentary information to show that he incurred delinquent debt by conditions beyond his control. He established that he took reasonable and responsible action to resolve his financial obligations by having his properties foreclosed eliminating his debt on the properties. He paid off another debt and is making payments on the remaining debt. Applicant demonstrated appropriate management of his finances and a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

### **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
Subparagraphs 1.a - 1.e:	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 access to classified information. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge