



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



In the matter of: )  
)  
) ISCR Case No. 15-01804  
)  
Applicant for Security Clearance )

**Appearances**

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

03/08/2017

**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. Clearance is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on July 24, 2014. On September 29, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on November 4, 2015, and requested a decision based on the written record.

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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.

A copy of the Government's file of relevant material (FORM), outlining the Government's case for denial of eligibility, was provided to Applicant by transmittal letter dated February 18, 2016. Applicant received the FORM on February 23, 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 did not respond to the FORM, and submitted no additional evidence. The case was assigned to me on February 24, 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 27, 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. Applicant did not respond to the FORM, submitted no additional evidence, and raised no objections. I admitted the document and considered it.

### **Findings of Fact**

In Applicant's response, he admitted to all the SOR factual allegations, with comments in extenuation and mitigation. Applicant's admissions are incorporated into my findings of fact. After a thorough review of the record evidence, including Applicant's 2014 SCA, his statement, and his answer to the SOR, I make the following additional findings of fact:

Applicant is 28 years old. He has been working as a technician specialist for a federal contractor since 2011. He received his General Education Development (GED) certificate in 2008, and his associate's degree in 2010. He has never been married, but has been residing with a cohabitant since October 2011. He has no children.

Applicant's work history shows he worked several jobs with different employers between 2006 and August 2011. A large federal contractor hired him in August 2011. (FORM, Item 4)

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had financial problems. In his 2014 SCA, Applicant attributed his financial problems to his financial immaturity - being too young and creditors issuing him credit cards with high limits even though he did not have the earnings to repay the debts.

Applicant's background investigation uncovered the five delinquent debts alleged in the SOR, which are established by the record evidence. He received collection notices, but he did not address them or maintain contact with the creditors. He did not contact the creditors to make payments or to establish payment arrangements. During the August 2014 interview, he promised to start contacting the creditors within six months. He failed to submit any documentary evidence to show any contacts with his creditors.

In his 2014 SCA, during his August 2014 interview, and in his answer to the SOR, Applicant expressed his intent to pay his debts. During his August 2014 interview, he promised to contact his creditors and make payment arrangements on his delinquent debts within six months of the interview.

In his answer to the SOR, Applicant claimed that he was not aware of the debt alleged in SOR ¶ 1.a, because he believed it was paid by his medical insurance. He acknowledged the debt and promised to make payment arrangements as soon as “the shock subsides from his recent job relocation.” Applicant also acknowledged the other four alleged SOR debts, attributed them to his age and immaturity, and promised to pay them one at a time, sometime in the near future.

Applicant presented no documentary evidence to show that he has been in contact with his creditors, or that he attempted to settle, pay, or dispute any of his delinquent debts. He presented no evidence to show he has attended a financial counseling course or that he maintains a budget. Applicant provided no information about his current financial position. He did not provide any information about his current income, monthly expenses, and whether 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 credit reports, his 2014 interview, and his 2015 SOR response. The evidence establishes the delinquent accounts alleged in the SOR. 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 Government 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, and that his debts were incurred under circumstances unlikely to recur. Applicant presented insufficient information to establish circumstances beyond his control and that he was financially responsible under the circumstances.

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.

## **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant did not submit sufficient evidence to show his financial responsibility. Applicant submitted no documentary evidence of payments to the SOR creditors 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 - 1.e:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge