



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



In the matter of: )  
)  
) ISCR Case No. 15-02739  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

02/21/2017

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 August 14, 2012. On September 26, 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 October 16, 2015, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM) was provided to Applicant by transmittal letter dated April 19, 2016. Applicant received the FORM on April 28, 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 or submit any additional evidence. The case was assigned to me on February 13, 2017.

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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.

## **Findings of Fact**

In Applicant's response, he admitted the 16 SOR factual allegations, which included 14 medical and consumer delinquent accounts, totaling over \$24,540, that he failed to pay state and federal income taxes for tax year 2011, and that he was discharged of all dischargeable debts pursuant to a Chapter 7 bankruptcy filing in 2009. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a defense contractor. He married in 1992, and has five adult children, ranging in age from 34 to 22. His work history shows he was unemployed in 2002-2003, and employed between 2003 and 2005. He has been working for his current employer, a federal contractor, since 2005. This is his first SCA.

In response to Section 26 (Financial Record) of Applicant's 2012 SCA, Applicant disclosed that he had financial problems and revealed that his dischargeable debts were discharged under a Chapter 7 bankruptcy proceeding in 2009, and that he failed to pay state and federal taxes in 2011 and his wages were garnished to pay these two debts. He also disclosed medical and consumer delinquent debts in collection, and averred he was making payments on some debts.

Applicant's subsequent background investigation uncovered the 14 delinquent debts alleged in the SOR, which are established by Applicant's SOR admissions and the record credit reports. Applicant presented no documentary evidence to show that he has been in contact with his creditors, or that he attempted to settle, pay, or otherwise resolve his delinquent debts. He 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. There is no information to indicate whether he has participated in financial counseling or whether he follows a budget.

## **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 and his SOR response. The evidence establishes the 14 delinquent accounts alleged in the SOR, totaling over \$24,540, his 2009 bankruptcy discharge of his debts, and his failure to pay his state and federal taxes in 2011. 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).

Applicant receives credit for paying his 2011 state and federal income taxes via a garnishment of wages. Notwithstanding, none of the financial considerations mitigating conditions apply. Applicant's financial problems are recent and ongoing. He presented no evidence to show that his financial problems are under control, and that his debts were incurred under circumstances unlikely to recur. 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. His evidence is insufficient to establish that circumstances beyond

his control contributed to or aggravated his financial problems. Furthermore, Applicant failed to establish that he was financially responsible under the circumstances.

Applicant was made aware of the Government's financial considerations security concerns when he completed his 2012 SCA, 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, pay, or otherwise resolve his delinquent debts since he acquired them. Applicant also failed to establish that he has sufficient income to keep his debts in current status and to pay his delinquent debts.

### **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.

I considered that Applicant has worked 12 years for a federal contractor. Notwithstanding, 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, except for the payment of his 2011 taxes via a garnishment of wages. 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.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	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