



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



In the matter of: )  
)  
) ISCR Case No. 15-02740  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

12/07/2016

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 February 20, 2009. On October 30, 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 18, 2015, and requested a decision based on the written record.

A copy of the Government’s file of relevant material (FORM), dated February 2, 2016, was provided to Applicant by transmittal letter dated February 3, 2016. Applicant received the FORM on February 10, 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 October 19, 2016.

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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.

## **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from January 28, 2013. 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 the evidence would be considered by me. Applicant failed to respond to the FORM, and he raised no objections. I admitted the document and considered it.

## **Findings of Fact**

In Applicant's response, he admitted the SOR factual allegations consisting of 14 delinquent accounts totaling over \$44,000. 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 36-year-old employee of a defense contractor. After completing high school, he attended a vocational school and earned a certification as an aviation maintenance technician in 2008. He married in 2001, separated in 2007, and his divorce became final in 2010. Applicant has an 11-year-old daughter. Since 2010, Applicant's wages have been garnished to pay for child support.

Applicant worked for private companies between 1999 and 2008. He indicated no periods of unemployment or underemployment. He has worked for his current employer, a federal contractor since 2008. This is his first SCA.

In response to Section 28 (Financial Delinquencies) of Applicant's 2009 SCA, Applicant disclosed that he had financial problems and revealed only one delinquent medical debt that he claimed was paid in 2012. The subsequent investigation uncovered additional delinquent debts. During an interview with a government investigator in January 2013, Applicant acknowledged his financial problems. He attributed his financial problems to his divorce, loss of his ex-wife's income, child support payments, medical bills, and not having sufficient income to pay his living expenses and debts. Applicant told the investigator that he was receiving medical care for depression, which was controlled with medications. He acknowledged that he was delinquent on all of his numerous student loans and other service accounts.

Applicant indicated that he had not participated in any financial counseling. He believed that he was living within his financial means. He described his financial situation as frustrating. He indicated his earnings are sufficient to pay rent, utilities, and food, but he has no other income to pay any other debts.

During his January 2013 interview, Applicant stated that his gross monthly income was \$3,749. After paying some of his debts and living expenses, Applicant had less than

\$1 in monthly discretionary funds. Applicant told the investigator that he plans to pay his delinquent debts as soon as he obtains additional funds. He claimed he did not disclose his delinquent accounts because “at the time he completed his SCA he did not have the information.” He averred that he lives within his financial means.

Applicant’s background investigation revealed the 14 delinquent accounts alleged in the SOR. Applicant’s admissions to the SOR allegations, his January 2013 summary of interview, and the record credit reports establish the 14 debts alleged in the SOR. 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, SOR response, and 2013 summary of interview. The evidence establishes the 14 delinquent accounts alleged in the SOR, totaling over \$44,000. 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 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.

Applicant submitted his SCA in 2009 disclosing only one delinquent debt. He claimed he did not have the information about his other delinquent debts at the time he completed his SCA. In 2013, he participated in a government interview where he was asked about his financial problems. At that time, he acknowledged his financial problems and promised to address his delinquent debts and work toward resolving them "as soon as he obtains additional funds."

Applicant was made aware of the Government's financial considerations security concerns during his 2013 interview. 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 continue making progress paying his delinquent debts.

I considered Applicant's medical condition and expenses, as well as his divorce, both of which could be considered circumstances beyond his control that contributed to or aggravated his financial problems. However, for mitigating condition AG ¶ 20(b) to

apply, Applicant must establish that he was financially responsible under the circumstances. Applicant did not submit sufficient evidence to show his financial responsibility.

### **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 submitted no 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. 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

## **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