



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



In the matter of:

ISCR Case No. 15-03294

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

02/24/2017

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 6, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to retain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on October 24, 26, and 31, 2012. (Item 3) 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 November 12, 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 DOD on September 1, 2006.

Applicant answered the SOR on February 9, 2016. He admitted 16 and denied 3 of the 19 allegations of delinquent debts. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on March 22, 2016. (Item 6) Applicant received a complete file of relevant material (FORM) on March 23, 2016, and 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 on April 9, 2016. (Item 7) Department Counsel had no objection to consideration of the additional material. (Item 8) I was assigned the case on December 2, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interviews (PSI) with an OPM agent in October 2012 (Item 3) 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 58 years old. He graduated from high school in 1977. He served on active duty in the Navy from June 1977 until June 1986 when he was honorably discharged. He was eligible for access to classified information while serving on active duty. He was first married in May 1989 and divorced in December 2009. He has a daughter from that marriage. He pays both monthly child and spousal support to his former wife and his daughter totaling \$550. He married again in March 2014, and has a stepson from this marriage.

Applicant has been employed as a test engineer with the same defense contractor since May 1997. There is no information in the case file to indicate his present salary. However, in the PSI, he listed his gross monthly salary as \$2,838, with net salary of \$1,701. He listed his wife's gross monthly salary as \$2,566, with net salary as \$1,950. He listed expenses that exceeded their combined income. Applicant noted in the PSI that he lives paycheck to paycheck but at times has approximately \$100 to \$200 remaining in a month. He has difficulty paying all of his debts and has to decide in some months not to pay some bills. (Item 3, PSI, at 14)

The SOR alleges, and credit reports (Item 4, dated October 2, 2012; and Item 5, dated October 26, 2012, and March 22, 2016) confirm the following delinquent debts for Applicant; two telecommunications debts in collection for \$466 (SOR 1.a), and \$82 (SOR 1.b); a gas utility debt in collection for \$74 (SOR 1.c); a television service debt in collection for \$288 (SOR 1.d); a charged-off automobile loan for \$12,014 (SOR 1.e); two different credit card debts in collection by the same collection agency for \$21,570 (SOR 1.f), and \$8,178 (SOR 1.g); a credit card debt charged-off for \$6,886 (SOR 1.h); a television service account in collection for \$261 (SOR 1.i); a credit card debt charged-off for \$18,012 (SOR 1.j); a credit card account charged-off for \$9,669 (SOR 1.k); a credit card debt charged-off for \$10,466 (SOR 1.l); a credit card debt charged-off for \$5,866 (SOR 1.m) a credit card debt in collection for \$14,902 (SOR 1.n); an account charged-off for \$5,000 (SOR 1.o); a department store account charged-off for \$1,742 (SOR 1.p); an account charged-off for \$905 (SOR 1.q); a mail order account charged-off for \$506 (SOR 1.r); and a service account in collection for \$292 (SOR 1.s).

The debts, except SOR 1.n, were acknowledged and confirmed by Applicant in the PSI. (Item 3) In his response to the SOR (Item 1), Applicant admitted all of the debts except the debts at SOR 1.e, 1.f, and 1.n. He claims that the debts at SOR 1.e and 1.n are duplicate car loan debts; and the debt at 1.f is the same as the debt at SOR 1.j. He provided no information to verify his claims that the debts are duplicate debts. The total delinquent debt in the SOR is approximately \$117,000.

Applicant in the PSI attributes his poor financial situation, lack of funds, and delinquent debts to the loss of income, expenses, and support payments from his first marriage. He admitted to some bad financial management practices. He offered no details on how his divorce and support payments contributed to his financial problems. A significant amount of his delinquent debts is credit card debt. Applicant admitted in the PSI that he used credit cards for food, rent, and other normal expenses when he did not have sufficient funds to pay for the items.

Applicant, in his answer to the SOR and his response to the FORM, claims that some of the debts (SOR 1.e, 1.h, and 1.n) were resolved by garnishment. He presented no documents to indicate his wages were garnished and the debts were resolved. He stated in the PSI that he intended to contact an attorney to file bankruptcy. In his recent response to the FORM, Applicant notes that he intends to resolve some of his debts through bankruptcy. Applicant did not present any documents to verify that he filed a bankruptcy petition or even contacted an attorney to file the petition. Applicant did not present any documents to signify that he has or is receiving financial counseling.

Applicant included a letter of compelling need from his manager and the company's facility security officer. The letter noted the company's vital need for Applicant to have access to classified information. They stated that Applicant is an important member of one of their teams that provides a critical component of a significant defense contract. The loss of Applicant's access to classified information would negatively impact the team's ability to support the vital defense contract. If a

replacement was required, it would take months to train the replacement and for the person to become fully effective. (Response to FORM, Letter, dated March 17, 2016)

## **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. Unless there is extreme circumstances, failure to pay voluntarily incurred delinquent debts raises questions about a person's judgment and trustworthiness. One who does not pay his financial obligations in a timely and responsible fashion, may also show lack of responsibility in the proper handling of classified information.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debts as documented in his credit reports, by his admissions to the OPM investigator, and his response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 4 and 5. 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 both an inability and an unwillingness to pay delinquent debt. Once the Government has established delinquent debt, the Applicant has the responsibility to refute or mitigate those debts.

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 condition at AG ¶ 20(a) does not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant has financially stable employment having been employed by the same defense contractor for approximately 20 years with no periods of unemployment.

The mitigating condition at AG ¶ 20(b) does not apply. Applicant's debts were incurred in the normal course of living and not because of any unusual circumstances or by circumstances beyond his control. Applicant claims the debts were incurred after his divorce and because of financial hardships. He did not present any information to link the circumstances of his divorce to the need to use credit cards for normal expenses and his failure to pay his credit card and other debts. Applicant has not shown that he acted reasonably and responsibly to resolve his financial problems. He noted that some debts were paid by garnishment, but he has not provided adequate information to show the garnishments were paid and resolved.

Mitigating condition AG ¶20(c) does not apply. Applicant did not present any evidence concerning receiving financial counseling.

Applicant has not 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 payment 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. While he claims to have resolved some debts by garnishment, he did not present evidence to verify and establish the payments. He did not present a plan as to how he intended to pay or resolve his debts. He does not have a track record of paying his debts. Applicant also claims that some of the debts are more than seven years old and uncollectible. Relying on debt to become uncollectible by the passage of time is not a good-faith effort.

Applicant stated his intent as early as 2012 to file a bankruptcy to resolve his debts. Applicant recently stated his intent again to file a bankruptcy in his response to the FORM. Bankruptcy is a legitimate and legal means of resolving debt. However,

Applicant has not presented any information to establish any actions taken to resolve the debts through bankruptcy. Mitigating condition ¶ 20(d) does not apply.

Applicant did not present any information on any disputes he entered concerning any of the debts. AG ¶20 (e) does not apply

The evidence does not support responsible management by Applicant of his finances. His financial problems are not under control. He has not established that he contacted the creditors to resolve the debts. Based on Applicant's failure to verify the debts and make payment arrangements, it is clear that he has not been reasonable and responsible in regard to his finances. His lack of reasonable and responsible action towards his finances is a strong indication that he may not protect and safeguard classified information. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

### **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. I considered Applicant's active duty service in the Navy, and his 20 years of service for the defense contractor. I considered his company's statement of compelling need for Applicant to work on a vital defense contract.

Even though Applicant has been gainfully employed by a defense contractor since 1997, he did not provide sufficient credible documentary information to establish that he incurred delinquent debt under unusual circumstance or by circumstances beyond his control. He did not establish that he has taken reasonable and responsible action to resolve his financial problems. He did not present a plan as to how he intended

to resolve his delinquent debts. Applicant did not demonstrate appropriate management of his finances and a consistent record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not 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:                      AGAINST APPLICANT

Subparagraphs 1.a - 1.s:                      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 access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge