



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ) ISCR Case No. 15-07366  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

08/11/2017

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant failed to present sufficient information to mitigate financial considerations security concerns.

**Statement of the Case**

On October 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated May 16, 2016, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 June 3, 2016. He admitted with explanations the seven allegations of delinquent debt. Department Counsel was prepared to proceed on

July 19, 2016, and the case was assigned to me on December 2, 2016. DOD issued a notice of hearing on April 28, 2017, for a hearing on May 17, 2017. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4), and Applicant's five exhibits (AX A through E) were admitted into the record without objection. Applicant testified. I received the transcript of the hearing (Tr.) on May 26, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is a 51-year-old high school graduate who has taken some college courses but has not received a degree. He served on active duty in the Navy as a cook from May 1985 until October 2005, when he retired and received an honorable discharge as a petty officer first class (E-6). He married in September 1996, but he and his wife have lived separately for eight years since March 2009. They have three grown children. Applicant works two full-time contractor positions as a systems engineer at two different government agencies. The salary for one position is \$80,000 a year, and the other is \$45,000 for approximately six months work. He also draws military retired pay of \$1,709. His total monthly average net pay is approximately \$7,600, with monthly expenses of approximately \$5,600, leaving \$2,000 in monthly discretionary funds. He has been eligible for access to classified information since 2005. He never had a security violation while being eligible for access to classified information. (Tr. 20-28, 98-103; GX 1, e-QIP, dated October 8, 2014; AX D, retired pay voucher, dated May 1, 2017)

The SOR alleges the following seven delinquent debts: a charged-off credit card debt for \$5,337 (SOR 1.a); a telephone bill in collection for \$99 (SOR 1.b); a mortgage past due for \$9,987 with a balance of \$287,905 (SOR 1.c); another telephone service debt in collection for \$1,096 (SOR 1.d); a medical debt in collection for \$51 (SOR 1.e); delinquent federal income taxes for tax years 2008 to 2013 for \$52,183.35 (SOR 1.f); delinquent state income taxes for tax years 2008, 2009, 2013, and 2014 for \$4,272.86 (SOR 1.g). The total amount of the delinquent debt is approximately \$73,000. Applicant claims that most of his debts have been paid or resolved. (Tr. 16-17)

Applicant claims he inquired about the debt at SOR 1.a, but he did not receive any information from the creditor. He believes the debt is a collection account that he

---

<sup>1</sup> I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

paid monthly and is resolved. He presented no information to reflect that the debt is paid or resolved.

Applicant claims the telephone debt at SOR 1.b is not his debt but his son's debt. However, he paid the debt himself to resolve the matter. He provided a credit card statement showing a debit for \$107. Applicant did not provide any documentation linking this credit card transaction to the telephone bill. He did not provide any document to show the account has been paid, resolved, or is current. (Tr. 25-37. 103-108; AX E, Statement, dated March 20, 2017)

The debt at SOR 1.c pertains to the mortgage on Applicant's home. Applicant was unemployed for nine months from September 2013 to July 2014. He tried to pay the monthly mortgage of \$1,828 using his retired pay and his unemployment compensation. He fell behind a few months. He was able to negotiate a payment plan with the mortgage company and was able to bring his mortgage current. In 2016, when Applicant and his wife separated, Applicant and one of his children continued to live in the house. For a few months, he negotiated with his wife to determine who would pay the mortgage. During this time, the mortgage payments were not timely paid, and the mortgage became a few months past due. Applicant now claims that he paid the mortgage and it is now current. Applicant agreed to furnish documents that show he is current with his mortgage. Applicant has not provided such documents. (Tr. 37-44)

The debt at SOR 1.d is based on Applicant's failure to return television cable equipment. Applicant claims he first learned of the debt in April 2015 when he was interviewed by a security investigator. He negotiated a payment plan with the telephone company and paid the debt. He claims that he provided a document to the security agent that interviewed him showing that the debt was paid or resolved. There is no record of the document being received by the government or in the case file. Applicant stated at the hearing that he could provide the document again after the hearing. Applicant did not provide any documents after the hearing to reflect that this debt has been paid or resolved. (Tr. 44-45)

Applicant stated that the medical debt at SOR 1.e is for dental work. He also noted that he provided a receipt for the payment to the security investigator. He stated that he could provide a copy of the receipt after the hearing. There is no receipt in the case file and Applicant did not provide a receipt post hearing. (Tr. 45-48)

Applicant does not have a reason for failing to timely file his federal tax returns for tax years 2008 to 2013, resulting in a federal income tax debt of \$52,183.35 as noted in SOR 1.f. He had a tax professional prepare the tax return forms, but he just did not timely file them because he had crises happening in his life. His mother passed away, a year later his mother-in-law passed away, and he was in the process of separating from his wife. He filed all his past-due federal tax returns at one time in March 2013. He realized that the failure to file his tax returns hurt his ability to maintain a government job and resulted in unpaid back taxes of over \$52,000.

In March 2014, Applicant negotiated a payment plan with the Internal Revenue Service (IRS). He paid \$648 monthly until January 2016. He did not provide proof of an agreed plan with the IRS or receipts for any taxes paid under the agreement. At the time, he was working two separate jobs. He now claims that he is paying his federal taxes by a payment plan of \$590.19 a month as of May 1, 2017. He did not provide any documents to verify that payment plan. Applicant also testified that he filed his 2014 and 2015 tax returns but owes over \$10,000 in back taxes for tax year 2015. (AX C, IRS Notice, dated May 8, 2017) He also notes he owes federal income taxes of over \$5,000 for tax year 2016. Based upon the hearing information provided by Applicant, his total federal income tax debt now is in excess of \$80,000. (Tr. 48-76)

Applicant admits he did not timely file his state income tax return for tax years 2008, 2009, 2013, and 2014. He filed the required state tax returns in April 2014 and his state income tax debt was approximately \$4,273 as reflected in SOR 1.g. Applicant claims that his state income taxes are current. However, the receipt he provided shows a payment of \$900 on March 1, 2016, with current balance of \$00.00. (AX A, Receipt, dated March 1, 2016) A later tax statement from the state reflects taxes owed of \$3,123.49. (AX B, Statement, dated June 7, 2016) Based on the available evidence, I find that Applicant still owes over \$3,000 in state income taxes. (Tr. 76-88)

Applicant admits he recently purchased or helped to purchase three high-value cars in 2012, 2013, and 2015. He has large outstanding balances on the loans for these cars. He also admits to having three credit card with high balances for which he only makes the minimum payments. He also claims to be working from a household budget, but he failed to provide the budget after the hearing. (Tr. 88-98)

I note that Applicant provided only limited information concerning his finances. His testimony at the hearing was contradictory and disjointed. He would correct his direct testimony when responding to questions from either Department Counsel or me. Applicant agreed at the hearing to produce documents to verify and corroborate his testimony. After the hearing, he did not provide the requested documents. (Tr. 88-98)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, all of which can raise questions about a person’s reliability, trustworthiness, and ability to protect classified or sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 his 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.

Credit reports (GX 2, dated October 12, 2014; GX 3, dated March 16, 2016) and a tax lien (GX 4, filed June 2, 2014) reveal, and Applicant admitted, that he has delinquent credit card, consumer, and tax debts. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability to satisfy debts,
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual federal, state, or local tax as required.

The record shows that Applicant has delinquent debts and he did not pay is annual federal or state income taxes for a number of years. The information raises issues about Applicant's willingness and ability to meet his financial obligations. Once the Government has established an 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount and is in compliance with those arrangements.

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. The debts are normal consumer, medical, and tax debts. Applicant had periods of unemployment. However in his response to the SOR, Applicant did not provide sufficient information to explain how these events led to the delinquent debts. In addition, Applicant claims to have made payments on and resolved some of the debts, or that he was making payment on the remaining debts. He claimed many of his debts were current. Applicant agreed at the hearing that he had documents to prove the status of the debts and he agreed to provide the documents after the hearing. He was advised that he needed to provide proof of his claims of payment or resolution of the debts. He has not documented his plans to resolve, payments, made, or the status of the debts. He did not provide information concerning financial counseling. Accordingly, he has not established a good-faith effort to pay his debts.

Applicant has been gainfully employed at two jobs since at least July 2014. He seems to have the ability to resolve his delinquent debts. However, he has not acted responsibly, because he has not provided information on plans to pay his delinquent debts, or his payment of debts. There is no clear evidence that his debt problems have been resolved. His finances are not under control. Overall, he has not provided evidence or proof that he acted with reason and responsibility towards his finances. His lack of documented actions on his efforts to resolve his financial problems are a strong indication that he may not protect and safeguard classified information. In sum, Applicant did not present sufficient information to mitigate financial security concerns.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 a security clearance 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 over 20 years of honorable service in the Navy. Applicant did not present sufficient information to establish that he acted reasonably and responsibly towards his finances under the circumstances. Applicant did not establish a record of paying his debts and acting in a financially responsible manner. He did not establish that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. Applicant has not met his burden to establish his good-faith efforts to resolve his remaining debts.

Applicant's lack of reasonable and responsible actions towards his finances is an indication that he will not protect and safeguard classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is denied.

### **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.g	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.

---

THOMAS M. CREAN  
Administrative Judge