



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 16-03372  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro Se*

05/15/2018

**Decision**

CREAN, Thomas M., Administrative Judge:

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

**Statement of the Case**

On March 25, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 December 8, 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 December 28, 2016. He admitted two (SOR 1.c and 1.e) and denied seven (SOR 1.a, 1.b, 1.d, 1.f -1.i) allegations of delinquent debt. Department Counsel was prepared to proceed on March 10, 2017, and I was assigned the case of September 26, 2017. DOD issued a notice of hearing on February 26, 2018, for a hearing on March 14, 2018. I convened the hearing as scheduled. The Government's discovery letter was admitted as Hearing Exhibit I. The Government's three exhibits (GX 1-3) were admitted into the record without objection. Applicant testified, and introduced 14 exhibits (AX A through AX N) that were admitted into the record without objection. I left the record open for Applicant to submit additional documents. Applicant timely submitted four additional documents that were admitted into the record as AX O, AX P, AX Q, and AX R. Department Counsel had no objection to admission of the documents. (GX 4 and GX 5) I received the transcript of the hearing (Tr.) on March 22, 2018. The record closed on May 14, 2018, after I received Applicant's last exhibit.

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 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 were effective 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 record, I make the following findings of fact. Applicant is a 35-year-old high school graduate who has taken some college level courses. He has never married, has no children, and never served in the military. He has been a security officer since April 2014, and was promoted to a security force program manager in August 2016. His starting yearly salary as a security officer was \$58,000 to \$62,000. His yearly salary as a program manager is now \$79,000. (Tr. 18-20; GX 1, e-QIP, dated March 25, 2015)

The SOR lists, and credit reports (GX 2, dated September 6, 2016; GX 3, dated April 23, 2016) confirm the following delinquent debts for Applicant: past-due apartment rent in collection for \$5,670 (SOR 1.a); a credit card account in collection for \$1,587 (SOR 1.b); a federal tax lien for \$28,699 (SOR 1.c); a credit card in collection for \$369 (SOR 1.d); a telephone service account in collection for \$1,281 (SOR 1.e); a credit card in collection for \$871 (SOR 1.f); and three traffic camera tickets for \$240 (SOR 1.g), \$240 (SOR 1.h), and \$55 (SOR 1.i). The total amount of delinquent debt is approximately \$39,000.

---

<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.

The rent debt at SOR 1.a is for an apartment that Applicant co-signed for his sister. His sister broke the lease by vacating the apartment before the lease terminated. Applicant, as the lease co-signer, was not advised by the landlord of the debt. He learned of the debt when his financial records were reviewed for a security clearance with another government agency. He talked to the landlord in August 2017, and learned his sister was not making payments on the debt. Applicant established a \$150 a month payment plan with the landlord which is deducted automatically from his bank account. The \$150 amount has continually been drafted since August 2017. (Tr. 20-25; AX H, Bank Statement, dated September 1, 2017)

The debt at SOR 1.b is a credit card that Applicant co-signed for his sister at the same time he co-signed the apartment lease. He learned about this debt in the security clearance process. Once learning of the debt, he established a \$115 monthly payment plan. He has continued to make the \$115 payment since August 2017. (Tr. 25-27; AX D, Bank Statement, dated May 29, 2017)

The debt at SOR 1.c is a tax lien from February 2011 for federal income taxes of \$7,500 for tax year 2006 (AX K, Tax Transcript), and \$15,000 for tax year 2007 (AX I, Tax Transcript). In 2003, Applicant was just starting to earn income and he was not knowledgeable about the federal tax system. The company he was working for did not withhold taxes from his pay for three years. He did not file his tax returns in 2009. The Internal Revenue Service (IRS) contacted him in 2010, and filed substitute tax returns for him for 2009 and some previous tax years. Applicant established a payment plan with the IRS for monthly payments of \$350 to satisfy the tax lien for both 2009 and 2010 tax years. He was making payments on line and alternating the tax year for which the payment was allocated each month. He also received a federal income tax assessment of \$1,124 for tax year 2012. (AX M, Tax Transcript). In November 2015, the IRS informed Applicant that since he was paying for different tax years, he was required to have an agreement for each year. (Tr. 32-38)

The IRS informed Applicant in August 2017 that they had not received his 2015 and 2016 tax returns. Applicant had contracted with a tax preparer to file his taxes for him. The IRS told Applicant that they could not make a new payment agreement with him until he filed his prior years and 2017 tax returns. After reviewing the tax returns, the IRS would make a payment arrangement with Applicant for all of the federal taxes he owed. He had a professional tax preparer recalculate his prior years' returns and complete his 2017 tax return. Applicant has not received a new payment plan from the IRS, but he made a \$400 good-faith payment to the IRS on May 14, 2018, anticipating the amount of taxes he will owe. (Tr. 38-44; AX R, Receipt and Bank Statement, dated May 14, 2018)

Applicant also owes state taxes for tax years prior to 2014. He has an agreement with the state to pay \$95 monthly to satisfy his state tax debt. He has been making payments since August 2017. (Tr. 37-39; AX F, Agreement dated August 8, 2017; AX N, Receipt, dated March 13, 2018)

The debt at SOR 1.d is a credit card account in collection for \$329. The account was paid in full and closed in December 2016. (Tr. 27-28; AX R, Credit Report, at 11)

The debt at SOR 1.e is a cellphone debt in collection. Applicant co-signed for a cellphone service account for his mother. His mother was making payments but lost her job and could no longer afford the phone. Applicant learned of this debt during the security clearance process. He reached an agreement in July 2017 with the collection agency to pay \$131 monthly on the debt. He has been making the payment since then by automatic deduction from his account. (Tr. 28-29; AX E, Receipt, dated July 24, 2017)

The debt at SOR 1.f is a credit card debt. The Government's credit report shows the debt has been paid and satisfied. (Tr.29-30; GX 2, Credit Report)

The debts at SOR 1.g, 1.h, and 1.i are traffic camera tickets from a city. Applicant contacted the city to learn more about the tickets. Since the tickets were prior to 2009, the city did not have information on the tickets. He disputed the tickets through the credit reporting agency and the tickets were removed from his credit report, since the city could not verify the tickets were issued to Applicant. (Tr. 30-32)

### **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 national security eligibility will be resolved in favor of the 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet 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 and Applicant’s admissions reveal that Applicant has delinquent consumer, credit card, and tax debts. The evidence is sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability to satisfy debts;
- (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 income tax as required.

The available evidence shows that Applicant was not able to resolve the delinquent debts. This raises issues about Applicant's 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 source, 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;

(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 substantial the basis of the dispute or provides evidence of actions to resolve the issue; and

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

Applicant's debts are numerous and recent. Three of the debts were incurred because Applicant co-signed a lease and a loan for the same relative, and for cellphone service for another relative. The relatives defaulted and did not pay the debts when due. While Applicant is legally responsible as a co-signer, the debts were incurred by circumstances beyond his control when the primary parties did not meet their financial obligations. His first employer did not withhold funds from his pay for taxes so he

incurred income tax debt. He has other debts because of low income jobs. He received three traffic camera tickets. He learned of most of the debts during the security clearance process. These circumstances causing the debts can recur.

Applicant acted in good faith towards his debts. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. His plan does not require paying off all debts immediately or simultaneously. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant acted responsibly under the circumstances, and he provided adequate information on his plans to pay and resolve his delinquent debts. Applicant is current with payment arrangements he entered to pay the three debts incurred because he co-signed financial agreements for relatives. Applicant provided significant documents to establish he is making regular payments on the debts at SOR 1.a, 1.b, and 1.e. He established that he paid the debts at SOR 1.d and 1.f. Applicant provided sufficient documentation to establish that he entered or is still negotiating payment plans to resolve both his federal and state income tax liabilities and is current with the plans to pay the tax lien at SOR 1.c. He disputed the three traffic camera tickets at SOR 1.g, 1.h, and 1.i. The dispute was resolved in his favor and the debts were removed from his credit report. Applicant did not present any evidence of financial counseling.

Applicant has shown sufficient action to resolve his delinquent debts. Applicant provided enough details and sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is sufficient evidence to establish why Applicant was unable to make greater progress resolving his debts. There is sufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. He has shown a good-faith effort to resolve these debts. His reasonable and responsible actions towards his finances is a strong indication that he will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated financial security concerns.

## **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(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 eligibility for access to classified information must be an overall common-sense 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. Applicant established that he took reasonable and responsible action to resolve his financial obligations. Applicant demonstrated appropriate management of his finances and showed a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has established his suitability for access to classified information. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a – 1.i: For Applicant

### **Conclusion**



In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

---

THOMAS M. CREAN  
Administrative Judge