



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



In the matter of: )  
)  
) ISCR Case No. 17-00616  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

01/12/2018

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F and personal conduct under Guideline E. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 30, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for his employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on May 25, 2016. (Item 6, Personal Subject Interview (PSI)) 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 March 24, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (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 the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR on May 10, 2017. He admitted the seven allegations of delinquent debt under Guideline F, and noted that the delinquent debts were charged off and no longer on his credit reports. While Applicant admitted the allegation of falsification of information on his e-QIP under Guideline E, his explanation leads to the conclusion that he denied that he deliberately provide false or misleading information. I consider his response to be a denial of the allegation. Applicant elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on June 30, 2017. (Item 7) Applicant received a complete file of relevant material (FORM) on July 19, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant responded to the FORM providing additional information. (Item 8) Department counsel had no objection to consideration of the additional material. (Item 9) I was assigned the case on October 23, 2017.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the PSI (Item 6) 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 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 PSI summary. Applicant timely responded to the FORM, but he did not raise any objection to consideration of the PSI. Without objection by Applicant, I will consider information in the PSI in my decision.

### **Findings of Fact**

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 59 years old. He did not graduate from high school but received a General Education Diploma (GED). Applicant did not remember when he received the GED. He has been a manufacturing engineer for a defense contractor since 1984. He married in September 1978 and has two grown children. He has been eligible for access to classified information since 2001. There is no evidence of any security violations. (Item 6, PSI, dated May 25, 2016)

The SOR alleges, and credit reports (Item 4, dated January 24, 2017, Item 5, dated November 10, 2015) confirm the following delinquent debts for Applicant: a bank

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<sup>1</sup> I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

debt charged off for \$26,531 (SOR 1.a); a credit card debt charged off for \$15,549 (SOR 1.b); a credit card debt charged off for \$651 (SOR 1.c); a credit card debt charged off for \$17,523 (SOR 1.d); a credit card debt charged off for \$745 (SOR 1.e); two medical debts in collection by the same collection agency for \$1,865 (SOR 1.f), and \$1,472 (SOR 1.g). The amount of the delinquent debt is approximately \$64,000.

The SOR alleges personal conduct security concerns for Applicant for failing to provide full, accurate, and complete information on his September 30, 2015 e-QIP. Applicant answered "no" to financial question 26 asking if in the last seven years he had any debts turned over to a collection agency, any credit cards suspended, charged off, or cancelled for failing to pay as agreed.

Applicant stated in the PSI that he had little knowledge of the other debts. He has no knowledge of the credit card debt at SOR 1.a, claiming he never had a credit card from the company. He does not remember receiving inquiries or collection notice for this account. He has not received any financial and debt counseling or education, and has not participated in any debt consolidation programs. (Item 6 at 6)

In the PSI, Applicant noted that the debt at SOR 1.b is a collection action for a credit card account he used to purchase goods. He initially made payments on the card, but it became delinquent in 2008 when he spent the funds he would normally use to pay the credit card for his father's funeral expenses. When he received collection notices from the credit card company, he informed them that he could not make payments on the card at that time. He believes he accepted a settlement offer from the credit card company and paid the settlement resolving this debt. He did not present any documents to verify his assertion. (Item 6 at 5)

Applicant has no knowledge of the account at SOR 1.c. He believes it may be his wife's credit card. He had a corporate card from the creditor but it was paid in full. He never received a collection notice for this card. (Item 6 at 5)

Applicant does not have any knowledge of the debts at SOR 1. d and 1.e from the same creditor. He and his wife had credit cards from the company that they used to purchase goods. He made payments on the accounts until 2008 and 2010 when he had to use his own funds to pay for his father's and his brother's funerals. He received collection notices for the accounts and told the creditor that he could not afford to make payments at this time. (Item 6 at 5)

Applicant has no knowledge of the medical debt at SOR 1.f and 1.g. He believes all of his medical cost have been paid. The accounts may be for his wife's medical expenses. He has not received any collection notices from the medical providers. (Item 6 at 6)

In his responses to the SOR and the FORM, Applicant reiterates that his delinquent debts resulted from the need to pay funeral and burial expenses for his father and brother. He provided death certificates to verify the deaths, and copies of the

funeral bills to show he paid the funeral and burial expenses. He reported that he took a large sum from his retirement savings to help pay the expenses. He also used his own funds to pay the federal and state taxes on the early withdrawal thus preventing him from paying his other debts. Available documents provided by Applicant shows that Applicant paid the taxes incurred by the early withdrawal of his retirement account. (Answer to SOR, dated May 10, 2017)

Applicant noted that the debts at SOR 1.a to 1.f were charged off and no longer on his credit reports. The only debt still being reported by the credit reporting agencies is the medical debt at SOR 1.g. Applicant also emphasized that his credit score rose from the 500s, when he was trying to pay the funeral expenses, to higher than 700. (Answer to SOR, dated May 10, 2010)

Applicant provided copies of his performance reviews. The reviews show that Applicant is a strong performer who exceeds customer expectations. He is a knowledgeable manufacturing engineer who handles difficult programs. (Response to FORM, dated August 2, 2017)

Applicant did not list any delinquent debts in response to question 26 on the e-QIP. In the PSI conducted on May 25, 2016, Applicant only knew of one delinquent account that he thought had been resolved. He stated that he had no knowledge of the other accounts mentioned by the investigator. He told the investigator that he intends to study his credit reports to determine if any of the accounts are valid. If valid, he would pay them. Applicant did not provide any additional information on this allegation in his response to the FORM.

## **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(a), 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 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified and sensitive information)

## **Analysis**

### **Financial Considerations**

Failure 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 or sensitive 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.

Credit reports reveal, and Applicant admits, that he had multiple delinquent debts dating to as early as 2008. The information is sufficient to raise issues about Applicant's willingness and ability to meet his financial obligations, and raises security concerns under the following Financial Considerations Disqualifying Conditions at 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.

Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue. Based on the information provided by Applicant, 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; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Mitigating conditions AG ¶¶ 20(a) and 20(b) apply in part. While Applicant's debts are numerous and recent, Applicant was required to pay funeral and burial expenses when his father passed away in 2008 and his brother in 2010. The expenditure of funds in the future for funeral and burial expenses is unlikely. However, Applicant may be faced with unanticipated expenses that limit his ability to pay other debt in the future. While the need to pay the family funeral and burial expenses were conditions beyond his control, he has not established that these conditions prohibited him from attempting to resolve his financial problems.

Mitigating condition AG ¶¶ 20(c) and 20(d) do not apply. Applicant did not provide information concerning financial counseling or participation in debt consolidation

programs. 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 nor must her plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given her circumstances. Applicant must establish that she has a reasonable plan to resolve financial problems, and that she 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. 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 did not provide information to establish that he resolved the debts alleged in the SOR. Applicant presented no evidence of debt payments or resolution of any debts. He has been gainfully employed by the same employer for over 34 years and seems to have the ability to resolve his delinquent debts. He has not acted responsibly because he has not developed plans to pay his delinquent debts. He appears to rely on the debts no longer being reported on his credit reports to resolve the debts. He did not provide documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. However, debt remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. The reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigation value. There is no clear evidence that his debt problems have been resolved, so his finances are not under control. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts.

The ability to resolve his financial problems were within Applicant's control. He did not present a plan to resolve his financial problems or any efforts to pay or resolve his delinquent debts. Accordingly, he has not established a good-faith effort to pay his debts. His lack of reasonable and responsible actions towards his finances is a strong indication that he will not protect and safeguard classified or sensitive information. He did not present information to show a good-faith effort to resolve his debts. Applicant did not present sufficient information to mitigate financial security concerns.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15). Personal conduct is always a security concern because it indicates whether the person's past conduct justifies confidence that the person can be

trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning the status of his finances. Applicant's failure to list his delinquent debts on his e-QIP raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied that he intentionally withheld full, complete, and accurate information on his security clearance application. He did not list any delinquent debts on his e-QIP. Applicant must have known that he had credit card and medical debts when he completed his e-QIP. He was paying his debts when he had to stop because he needed to use his own funds to pay

his father's and mother's funeral and burial expenses. He may not know all of the details of his financial situation, but he knew he had delinquent debt. Applicant's failure to list any delinquent debt on the e-QIP was deliberate with an intent not to present a true picture of his financial situation. His failure to provide the correct information obscured the full extent of his financial situation from adjudicators. I find Applicant deliberately failed to provide correct and accurate information concerning his debts on his SCA.

### **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. I considered Applicant's 34 years of service in the defense industry and that he is highly regarded by his employer. I considered that he successfully had eligibility for access to classified information since 2001.

Applicant failed to pay his delinquent debts. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances, to adequately articulate his positions, and provide facts to mitigate the financial security concerns. In short, the file lacks sufficient evidence to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantiating documents and details to explain his finances. In addition, he deliberately failed to report his debts on his SCA. Applicant's failure to appropriately manage his finances, and his lack of action to resolve financial issues, are firm indications that he may not adequately safeguard classified information. 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 did not mitigate the security concerns arising from his financial situation and personal conduct.

### **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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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