



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



In the matter of: )  
)  
) ISCR Case No. 17-01538  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2018

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**Decision**

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CREAN, Thomas M., Administrative Judge:

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

**Statement of the Case**

On June 16, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) A security investigator from the Office of Personnel Management (OPM) interviewed Applicant on January 9, 2017. (Item 4, Personal Subject Interview (PSI)) After reviewing the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 5, 2017, 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 the DOD on September 1, 2006.

Applicant answered the SOR on June 28, 2017. He admitted five and denied three allegations of financial security concern. He requested that the matter be decided on the written record. (Item 2) Department Counsel submitted the Government's written case on August 2, 2017. (Item 8) Applicant received a complete file of relevant material (FORM) on August 11, 2017, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a response to the FORM. I was assigned the case on December 12, 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.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the PSI (Item 4) 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 did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I considered 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 47 years old. He graduated from high school in June 1987, and received his bachelor's degree in May 1992. He and his wife were married in September 1999, and they have two children. Applicant has been employed by a defense contractor as a test engineer since September 2015. He was employed as a quality consultant or test engineer from October 1992 until June 2015. He was unemployed from June to September 2015. (Item 3, e-QIP, dated June 16, 2016; Item 4. PSI, dated January 9, 2017)

The SOR alleges, and Applicant's PSI and his response to the SOR confirm the financial allegations in the SOR; that Applicant did not file state tax returns for tax years 2012 through 2015 (SOR 1.a); that he had a charged-off mortgage loan past due for

\$76,078 with a balance of \$216,852 (SOR 1.b); a personal loan charged off for \$6,579 (SOR 1.c); a utility debt placed for collection for \$6,159 (SOR 1.d); a charged-off automobile loan for \$4,761 (SOR 1.e); a debt for telephone service in collection for \$294 (SOR 1.f); a judgment on a delinquent personal loan for \$2,635 (SOR 1.g); and a conviction and sentence for misdemeanor theft in 2013 (SOR 1.h). Applicant attributes his delinquent debt to medical and legal bills which have now been paid. Applicant did not provide information on the medical or legal bills that may have led him to his financial problems. (Item 3, e-QIP, dated June 16, 2016; Item 4, PSI, dated January 9, 2017)

Applicant listed his failure to file his state income tax returns for 2012 through 2015 on his e-QIP. In the e-QIP and PSI, Applicant reported that he believed he did not have to file the returns since he did not owe any state taxes. On the e-QIP, he claims the returns were being prepared by a tax preparer and would soon be filed. In the PSI and in his answer to the SOR, Applicant reported that the state tax returns were filed and that he did not owe state income taxes. Applicant did not provide any documents, including copies of the filed tax returns, to verify his claim the returns were filed. (Item 2, Answer to SOR, dated June 28, 2017; Item 3, e-QIP, dated June 16, 2016; Item 4, PSI, dated January 9, 2017)

Applicant obtained a mortgage in June 2005 of approximately \$250,000 for a condominium. The real estate market collapsed and the value of the condominium went from \$250,000 to approximately \$80,000. Applicant no longer wanted to make the \$1,800 monthly payments on a condominium that lost so much value. Applicant voluntarily allowed the mortgage holder to sell the condominium in December 2013. In his response to the SOR, Applicant provided documentation from the mortgage company releasing the lien on the property, forgiving the mortgage debt, ceasing collection action on the loan, and not proceeding further with any foreclosure action. The mortgage debt has been resolved, and SOR 1.b is found for Applicant. (Item 2, Answer to SOR, dated June 28, 2017; Item 3, e-QIP, dated June 16, 2016; Item 4, PSI, dated January 9, 2017)

Applicant admitted the delinquent personal loan at SOR 1.c. The account was sold to another creditor, and Applicant said he would contact the new creditor and establish a payment plan. He presented no information on his communication with the new creditor or efforts to settle the account. (Item 2, Answer to SOR, date June 28, 2017)

The debt in SOR 1.d is a utility bill Applicant incurred for his condominium. Applicant claims in the PSI that his account was paid on time until he turned the condominium over to the new condominium board in payment of a debt he owed. The utility debt was incurred after he turned the condominium over to the condo board to pay the debt owed listed as SOR 1.h. Applicant disputes that he owes the debt, and he has no intention of paying the debt. He does not believe he is responsible for the debt. He does not dispute the amount of the debt. If it is determined that he owes a debt, he will negotiate a payment arrangement. He presented no documents to show that he

disputed the debt, his attempts to contact the creditor, and his efforts to reach a settlement. (Item 4, PSI, dated January 9, 2017; Item 2, Response to SOR, dated June 28, 2017)

The debt at SOR 1.e is a delinquent automobile loan. Applicant took out a loan of about \$20,000 in 2014 to purchase a car. Applicant had an accident and the car was totaled. The insurance company paid all but \$4,470 of the debt, resulting in a delinquency owed by Applicant. (SOR 1.e) Applicant could not make the payment for the amount still owed, so the loan was charged off. In his response to the SOR, Applicant stated that he would negotiate a payment plan. Applicant did not provide any documents to establish his efforts to resolve the debt.

The debt at SOR 1.f is for a cell phone account Applicant opened in 2005. Applicant cancelled the account in 2014 with a balance on the bill of \$294. Applicant did not have the funds to pay the debt, so it was sold to the collection agency. In the January 9, 2017 PSI, Applicant claims to have settled the debt in June 2016 and the account is closed. In his June 28, 2017 response to the SOR, Applicant claims that he would pay the debt in three months. Applicant did not provide any evidence to show that the debt has been paid or resolved. (Item 4, PSI; Item 2, Response to SOR)

The debt at SOR 1.g is for a personal revolving account Applicant opened in the fall of 2013 to use to pay his condominium fees. Applicant could not afford to pay an increased fee, so he opened the account to have funds to pay the condominium fee. The lender obtained a judgment against Applicant for failing to pay the account. Applicant proposed an arrangement for him to relinquish the condominium to the condominium board to cover the \$2,635 debt. The arrangement is still in litigation since it pertains to a judgment. Applicant presented no documentation to show his communications with the lender and the condominium board. The debt has not been paid or resolved. (Item 4, PSI; Item 2, Response to SOR)

Applicant admits that he was charged with felony theft/unauthorized conversion in December 2013. In 2005, Applicant and two other tenants of the condominium building where he resided agreed to establish and pay into a fund to be used to repair and renovate the building. They collected funds from other condominiums in the complex for about eight years. Applicant was the treasurer of the informal organization. He collected the funds and arranged to make and pay for repairs. In 2013, new tenants moved in to the condominium building and questioned the informal organization, the fees collected, and the repairs supposedly made. Applicant agreed to relinquish the treasurer's position, and was to turn over his records. Applicant did not keep good records and claimed part of the records were lost in a flood. The new tenants filed charges against Applicant with the police and Applicant was arrested in December 2013. Applicant reached an agreement to plead guilty to misdemeanor theft, and was sentenced to 24 months of probation and required to pay \$10,000 in restitution. Applicant claims all fees have been paid and the probation completed. He did not provide sufficient evidence to establish that the restitution was paid. Sufficient time has passed for the probation to be completed. (Item 2, Response to SOR; Item 4, PSI at 4;

Item 6, Federal Bureau of Investigation (FBI) Criminal History Information, July 30, 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(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 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 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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

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.

Applicant did not timely file his state tax returns for 2012 to 2015 because he believed he did not owe any taxes. He claims the tax returns have now been filed. His failure to file the tax returns shows an unwillingness to resolve financial issues. Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports confirm the remaining SOR delinquent debts. Applicant's admission and FBI documents confirm Applicant's conviction for theft and unauthorized conversion. The evidence is sufficient to raise the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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.

Once the Government has established the 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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

The mitigating conditions do not apply except for the debt at SOR 1.b. Available evidence shows that Applicant has been gainfully employed since October 1992, and he had only one short period of unemployment from June to September 2015. He did not provide any information on the status of his present finances or salary. He did not show how he manages his finances, and he presented no evidence that he received financial counseling. The evidence shows that the Applicant's financial issues are recent, frequent and diverse problems, and happened under circumstance that are likely to recur. The issues raise doubt about Applicant's reliability, trustworthiness, and good judgment. All the conditions that caused financial problems were within Applicant's ability to control.

Applicant did not provide enough details about what he did to address the tax return allegations in the SOR. Applicant did not file state tax returns for at least four tax years. He did not file state tax returns because he believed he did not owe any state taxes. It is well recognized that filing tax returns and paying taxes is a necessary requirement of being a citizen. A belief that no taxes are owed does not relieve a person from the responsibility to file returns. Failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified and sensitive information. A person who fails repeatedly to fulfill his or her legal obligation to file tax returns does not demonstrate the high degree of good judgment and reliability required for a grant of access to classified or sensitive information. Where an applicant may have attempted to correct the tax return problem, there must still be

Careful consideration of the applicant's trustworthiness in view of his longstanding prior behavior evidencing irresponsibility by failing to timely file income tax returns. The available evidence shows that Applicant willingly and deliberately did not file state tax returns for many years. He did not provide sufficient evidence that the tax returns have now been filed. By failing to file four years of state tax returns, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified or sensitive information. His lack of filing action resulted in his financial problems being ongoing and recent and are likely to recur.

Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. 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 actual debt payments or reduction of debt through payments. The only debt Applicant provided information that he address and resolved is the mortgage debt at SOR 1.b. A promise to pay or attempt to resolve debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant claims that he has made or is attempting to make arrangements to pay his remaining delinquent debts. He has not presented evidence 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 on the debts at SOR 1.c to 1.g. He did not provide sufficient documentation to show that he is working diligently to resolve these debts that have been ongoing for over four years. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving these financial problems since he has been employed almost continually since October 1992.

Applicant did not present sufficient evidence that he resolved his financial problems raised by his conviction for misdemeanor theft. The criminal charge for misdemeanor theft shows that Applicant has a history of not meeting his financial obligations. He did not present sufficient evidence that his fine has been paid.

There is insufficient assurance that Applicant's financial problems are being resolved, are under control, and will not recur in the future. His lack of reasonable and responsible actions towards the majority of his finances is a strong indication that he will not protect and safeguard classified or sensitive information. Under all these circumstances, Applicant failed to mitigate financial security concerns raised by SOR 1.a, and 1.c to 1.h.



## **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 did not provide sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his tax and financial obligations. Applicant did not demonstrate appropriate management of his finances and did not show a record of action to resolve tax and 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 failed to mitigate 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
Subparagraph 1.a;	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c to 1.h:	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