



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00267

**Appearances**

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel

For Applicant: *Pro se*

10/16/2018

**Decision**

CREAN, Thomas M., Administrative Judge:

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

**Statement of the Case**

On December 6, 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) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On February 6, 2018, 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 June 8, 2017.

Applicant answered the SOR on March 8, 2018. He admitted all but one of the 23 delinquent debts. (SOR 1.s). He requested that the matter be decided on the written record. (Item 2) Department Counsel submitted the Government's written case on April 20, 2018. (Item 6) Applicant received a complete file of relevant material (FORM) on MAY 3, 2018, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide a response to the FORM. I was assigned the case on July 26, 2018.

### **Findings of Fact**

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 33 years old. He graduated from college in 2009 with a bachelor's degree in electrical engineering. After receiving his degree, he worked as a laboratory assistant at his alma mater, and as a technical service engineer for a private business. He is not married but has had a cohabitant since March 2014. He has not served in the military and has no children. (Item 3, e-QIP, dated December 6, 2016)

The SOR alleges, and Applicant admits, that he did not timely file his federal and state income tax returns for tax year 2012. (SOR 1.v and 1.w) The SOR also alleges and credit reports (Item 4, dated January 10, 2018; Item 5, March 31, 2017) confirm the following delinquent debts: student loans in collection for \$20,696 (SOR 1.a), \$19,413 (SOR 1.b), \$8,474 (SOR 1.c), \$6,349 (SOR 1.d), \$5,286 (SOR 1.e), \$4,212 (SOR 1.f), \$3,638 (SOR 1.g), \$3,032 (SOR 1.h), \$1,598 (SOR 1.i), \$1,459 (SOR 1.j), \$1,028 (SOR 1.l), \$771 (SOR 1.n), \$669 (SOR 1.o), \$385 (SOR 1.p), and \$257 (SOR 1.r). Also listed are an account placed for collection for \$1,280 (SOR 1.k), a credit card account in collection for \$939 (SOR 1.m), a medical account in collection for \$302 (SOR 1.q), and two credit card accounts to the same creditor for \$20,589 (SOR 1.t), and \$6,949 (SOR 1.u). He denies a judgment for \$1,611 (SOR 1.s), stating that it is a mistake on his credit report. The total amount of the SOR delinquent is approximately \$107,526.

On the e-QIP, Applicant reported he did not timely file his 2011 and 2012 federal and state income tax returns. He stated he failed to file the returns because of personal relationship challenges complicated by a very demanding and stressful job in his first years of a new career requiring long hours and undivided attention. He tried to file his 2011 tax returns but he was told by his tax accountant that the time for filing was past. He did not think any action was required because he owed no taxes. He also noted that his economic deferment for student loans ran out in fall 2010. His father provided him with guidance and advice on financial matters, but his father passed away. Since his father could not advise him, Applicant did not know he could take advantage of an opportunity to renegotiate the terms of his student loan payments. He was unable to keep up with the loan payments when he lost his girlfriend's income, and he had to rely only on his income. He reported that he has not taken action to consolidate the student loans to lower his payments. On his other debts, he reported that "life events led to my losing track of financial obligations."

Applicant did not present any documentary evidence of negotiations with the Internal Revenue Service (IRS) to file or paying any taxes he may owe. He did not present any evidence to verify any payments made on any of his debts. He did not present any evidence to show that the judgment at SOR 1.s is not a judgment issued against him.

## **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 or her 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's admitted in his e-QIP and his response to the SOR that he failed to timely file federal and state income tax returns for tax years 2012. Information in the credit reports establishes the delinquent debts noted in the SOR. The evidence of record 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; 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. The information provided by Applicant in his e-QIP and in response to the SOR establishes that Applicant did not timely file his 2012 tax return. Applicant has to establish his good-faith efforts to meet his financial obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant must act responsibly given his circumstances. He 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 financial obligations. Applicant must also establish a meaningful track record of filing tax returns and resolving debts. A meaningful track record of tax return filing and resolving debt can be established by evidence of actually filing tax returns and establishing a plan to pay debts. A promise to file tax returns and pay debts is not a substitute for a track record of filing returns in a timely manner and acting in a financially responsible manner.

Failure to timely file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. It is well known that federal tax returns for a particular tax year are to be filed by April 15 of the following year, unless an extension is applied for and granted. Voluntary compliance with government rules and systems is essential for protecting classified and sensitive information. A person who fails to fulfill his or her legal obligation to timely 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. An applicant's failure to timely file tax returns is a strong indication that the individual may not follow the rules and guidance concerning safeguarding classified and sensitive information.

Applicant has not presented any evidence that he filed his past-due tax returns. There are procedures available to a taxpayer to file tax returns even if they do not have the funds to pay the taxes due. Applicant did not follow the established government

rules and procedures and contact federal and state tax authorities for help to understand the actions she must take. He just simply failed to file the tax returns. Applicant presented no evidence that he received financial counseling.

There is insufficient evidence to establish that he is paying or resolving his other SOR debts. There is insufficient assurance that his tax filing and financial problems are being resolved, are under control, and will not recur in the future. Under all these circumstances, Applicant failed to mitigate 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 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. 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

Subparagraphs 1.a – 1.w:

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