



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



In the matter of: )  
)  
) ISCR Case No. 14-03163  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

10/30/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems were caused by circumstances beyond his control. Although he has significant debt, Applicant demonstrated financial responsibility handling his financial problems by communicating with creditors, and making payments consistent with his financial ability. Considering the circumstances of this particular case, Applicant’s financial problems do not show he currently lacks judgment, reliability, or trustworthiness. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 30, 2012. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on January 16, 2015.<sup>1</sup> Applicant answered the SOR on February 9, 2015, and requested a hearing

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<sup>1</sup> The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 8, 2015. DOHA issued the notice of hearing on June 11, 2015, scheduling a hearing for July 14, 2015.

At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified and presented 19 exhibits (AE 1 through 19). All exhibits were admitted without objection and made part of the record. DOHA received the hearing transcript (Tr.) on July 21, 2015.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.g through 1.i, and 1.k, with explanations. He denied the remaining SOR allegations. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 47-year-old travel specialist. He requires a security clearance to retain his job with a defense contractor. Applicant married his wife in 1998, and they have three children, ages 17, 15, and 22 (from his wife's prior relationship). After graduating from high school, Applicant enlisted in the U.S. Air Force in 1987, where he served until he was honorably discharged in 1995, as an E-4. While in the Air Force, Applicant possessed a secret level clearance. There is no evidence of any security violations or security concerns during his service.

While in the service, Applicant completed two years of college, but did not earn a degree. He attended a bible school from 2004 to 2011, and became a minister. He performs duties as a church trustee, and has not had any problems accounting for the church's assets. Additionally, Applicant received training to become a certified real estate professional, and to serve as an elections judge.

Applicant worked as a travel manager for federal contractors from 1996 to 2009. There is no evidence that he had any work-related problems of security concern. He left his employment because he had a long work commute, and he wanted a job closer to home.

In 2009, Applicant took a position with a federal agency as a civil service employee. He resigned from his job before he completed his one-year probation period. He explained that he was not getting along with his supervisor, and that she was creating a hostile work environment. Applicant averred his supervisor wanted him to help her get rid of some of the staff using what he perceived were illegal or unethical tactics. When he refused, she informed him that he was not the manager she was looking for in that position. Following his resignation, Applicant was unemployed from September 2010 until November 2012. Between November 2012 and August 2013, Applicant was rehired by the same federal contractor he worked for before he took a civil service position. He was making around \$70,000. However, In August 2013, his

interim security clearance was denied because of the financial concerns alleged in the SOR.

Applicant disclosed in his 2012 SCA that he failed to timely file his 2011 federal and state income tax returns. He explained that his wife was running a family daycare business and she delayed getting all the information required to file the tax return. She told him that the stress she suffered because he was unemployed for two years delayed her completing the task. Applicant's family total income for 2011 was \$45,000, and they did not owe any taxes. He filed his 2011 income tax return in 2013, and apparently received a tax refund.

Applicant also disclosed in his 2012 SCA several delinquent accounts (a repossessed motorcycle and two charged-off consumer accounts) that he was unable to pay because of his lack of income. Applicant explained that his conversations with the creditors were unsuccessful because they wanted payments that he could not afford during his unemployment. The subsequent background investigation disclosed the 12 delinquent debts alleged in the SOR, totaling approximately \$20,000. Applicant's accounts are established by the three credit reports in evidence.

Applicant explained that all of his financial problems were the result of his two-year period of unemployment. Because of the downturn of the U.S. economy he was unable to find a full-time job. During his period of unemployment, Applicant received emergency unemployment compensation, and worked numerous part-time jobs as a courier, process server, and a driver for a mail delivery company. He is currently a part-time employee for the mail delivery company. As a part-time employee, Applicant was making approximately \$24,000 a year. In contrast, when he was fully employed he was making \$90,000 a year. Applicant and his wife's combined income during his period of unemployment and underemployment was insufficient for them to pay their living expenses and the accumulated debts.

On May 29, 2015, Applicant and his wife filed for Chapter 13 bankruptcy protection, seeking to establish a repayment plant for close to \$53,000 in accumulated debts, and to prevent the foreclosure of his delinquent home mortgage. Applicant included in his bankruptcy all the dischargeable delinquent accounts alleged in the SOR. Applicant believes that he had no choice but to file for bankruptcy protection because he could not afford the delinquent debt payments. (AE 19) Applicant and his family have made lifestyle changes to save money and pay their debts. They no longer use credit cards, and only purchase their living necessities.

Applicant's credit reports show that he has paid other debts not alleged in the SOR. I note that Applicant denied a number of delinquent medical accounts alleged in the SOR. When questioned at the hearing, Applicant indicated he was "clueless" about those debts, and that he did not investigate whether these were his debts.

Applicant expressed remorse for his financial situation. He claimed that he had no financial problems before his period of unemployment. If he is granted a clearance,

he will be able to go back to work with the same federal contractor he worked for before he took a civil service job. With his and his wife's income, and the pending bankruptcy discharge, he and his wife will be able to regain control of their financial situation. He understands that he is required to maintain financial responsibility to be eligible for a security clearance.

## **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

After 8 years of honorable military service, Applicant worked for federal contractors for 13 years, apparently with no financial problems. Between September 2010 and November 2012, Applicant experienced a two year period of unemployment and underemployment. Without sufficient earnings, his mortgages and credit accounts became delinquent, and he accumulated the 12 debts alleged in the SOR totaling close to \$20,000. Additionally, he failed to timely file his state and federal income tax returns for tax year 2011.

Financial considerations disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts," AG ¶ 19(c): "a history of not meeting financial obligations," and AG ¶ 19(g): "failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same," apply. Applicant's financial problems were the result of his inability to pay the debts, and not because of his unwillingness to do so.

AG ¶ 20 lists conditions that could mitigate the financial considerations security concerns:

- (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 problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) has only partial applicability because Applicant's financial problems are recent and ongoing. However, I find that his financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is fully applicable because his financial problems were caused by circumstances beyond his control. Applicant resigned from his civil service job because he was aware he would not be offered the position. His manager told him that he was not the manager she was looking for. There is no evidence to show that Applicant's unemployment was caused by his misconduct. He was unemployed and underemployed for a two-year period. He maintained communications with his creditors, and continued to pay some of his delinquent debts in proportion to his financial resources. Applicant's evidence shows that he was diligent seeking part-time employment while looking for a permanent position. AG ¶¶ 20(c) and (d) are partially applicable. He received financial counseling through the bankruptcy process, and the credit reports show that he paid other debts not alleged in the SOR.

Applicant is in a difficult financial situation. He and his wife's income is insufficient for him to establish a viable payment plan to pay his debt. However, with the income from his pending employment with a federal contractor and the anticipated bankruptcy discharge, he will have the financial means to address his debts and regain control of his financial situation.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant honorably served 8 years of active service, and possessed a secret clearance. After his separation from the service, Applicant worked for federal contractors for 13 years and was financially responsible until he was essentially forced to resign his civil service job and underwent a two-year period of unemployment and underemployment. Applicant's financial problems resulted from circumstances beyond his control. He understands what is required of him to be eligible for a security clearance. With his current job income and the pending Chapter 13 bankruptcy repayment plan, Applicant will regain control of his financial situation. His financial problems are unlikely to recur and do not show he currently lacks judgment, reliability, or trustworthiness.

### **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.n:

For Applicant

**Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge