



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



In the matter of: )  
)  
) ISCR Case No. 14-03678  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

06/04/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to submit evidence to show that he has a track record of financial responsibility, that he does not have a current financial problem, or that his financial problem is being resolved or is under control. He failed to mitigate the Guideline F security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 18, 2013. On September 12, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on September 30, 2014, and elected to have his case decided on the written record.

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<sup>1</sup> 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.

A copy of the Government's file of relevant material (FORM), dated February 20, 2015, was provided to him by transmittal letter dated February 24, 2015. Applicant received the FORM on March 13, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information.

### **Procedural and Evidentiary Issues**

In the FORM, the Government offered as evidence a summary of Applicant's interview (PSI) with an Office of Personnel Management (OPM) investigator conducted on April 4, 2013. (Item 3) The Government noted that Item 3 had not been authenticated, and acknowledged that the document was subject to an objection on that ground. (Directive, Enclosure 3, ¶ E3.1.20 (An ROI may be received with an authenticating witness provided it is otherwise admissible . . . . )) The Government invited Applicant to correct, add, revise, delete, or update the information in Item 3, or to object. (Footnote 1, pg. 2)

Applicant received the FORM on March 13, 2015. He did not provide a response to the FORM, and submitted no corrections, clarifying comments, or rebuttal. He did not object to the FORM or to Item 3.

The Supreme Court has explained that "waiver is the intentional relinquishment or abandonment of a known right." *Kontrick v. Ryan*, 540 U.S. 443, 458, n. 13 (2004) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). I presume Applicant read the FORM and elected not to submit a response or objection. When evidence is submitted in a case, an Applicant is expected to object to the evidence, if there is a reason to do so, and he or she believes the evidence weighs against his or her position. As a general statement of the law, failure to object to consideration of evidence results in waiver.

There is no requirement that Department Counsel discuss the benefits or merits of making a rights' election. Indeed, Applicant may have relied upon Department Counsel's inclusion of Item 3 in the record, and he may have wanted that evidence considered.

Applicant's election not to object may have been better "informed" if Department Counsel's advice in the FORM had included the comments that: if Applicant elects to object to consideration to the OPM summary of his statement (Item 3), it will not be accepted as evidence in his case; that if he does not object the PSI will be considered as evidence; and that Applicant's failure to respond to the FORM would be considered as a waiver of his right to object, and that his waiver would then allow an administrative judge to consider the document on its face.

Because there was no explicit warning that he had a "right" to exclusion of the OPM PSI (Item 3), I will not consider any information in Item 3 that weighs against approval or reinstatement of Applicant's security clearance in this case. See Directive ¶

E3.1.20; ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (explaining that an OPM PSI is inadmissible unless properly authenticated).

### **Findings of Fact**

Applicant admitted the SOR allegation. His admission is incorporated as a finding of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is 37 years old. He graduated from high school in 1995. He married his spouse in December 2010, and he has two children of this marriage (ages 14 and 12), and three step-children (28, 20, and 19). This is his first application for a security clearance. According to his 2013 SCA, Applicant has worked as a wireless engineer for two companies from 2002 to present. Additionally, he is self-employed as the co-owner of a company (apparently a real estate investment and management business) since 2008.

Applicant disclosed in Section 26 (Financial History) of the 2013 SCA that his company had a delinquent debt (not alleged in the SOR). He explained that the housing market had been slow and the rental property they have had not been rented and they were behind on the payments. Applicant claimed that he set up a payment plan last year, but that this year he was not able to afford the payments. He averred that his company was working toward getting the debt resolved.

The SOR alleges a \$30,000 delinquent judgment, filed against Applicant in favor of a bank in August 2012. In his answer, Applicant admitted the debt, but he provided no information concerning the delinquent judgment. He provided no information about when he acquired the debt, why it became delinquent, what efforts he took to stay in contact with the creditor, or of efforts to pay the debt or the delinquent judgment.

Furthermore, Applicant provided no information about his current earnings and financial position. He did not provide any information about his monthly income, his monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and his debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget.

The March 2013 credit report in the FORM (Item 5) shows 17 open accounts, all of which are current and in good standing.

### **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)

Applicant admitted, and the credit report established, the delinquent judgment alleged in the SOR. AG ¶ 19(a) “inability or unwillingness to satisfy debts” and AG ¶ 19(c) “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists five 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the financial considerations mitigating condition apply. The judgment against Applicant is outstanding and he did not present any evidence to show that his financial problem occurred under unusual circumstances and it is unlikely to recur. He failed to present evidence to show that he acted responsibly under the circumstances, and that he made a good-faith effort to repay his creditor or otherwise resolve this debt. He presented little documentary evidence of payments made, contacts with the creditor, or of any efforts to otherwise resolve the SOR debt. In sum, he presented no information to justify the applicability of any of the mitigating conditions.

I considered that Applicant's credit report shows 17 current accounts, and no delinquent accounts. This is some evidence of financial responsibility. Notwithstanding, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control.

## **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). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant failed to submit evidence to show that he has a track record of financial responsibility, that he does not have a financial problem, or that his financial problem is being resolved or is under control. He failed to mitigate the Guideline F security concerns.

## **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

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge