



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



In the matter of:

	)	ISCR Case No. 14-06433
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2015

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. He failed to mitigate security concerns for personal conduct under Guideline E. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 9, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on May 24, 2013. (Item 4) 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 August 1, 2015, 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;

DOD 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 August 25, 2015. With his answer, he included three new credit reports. (Item 2) He admitted to the delinquent debts but denied the falsification under Guideline E. He noted he has taken significant steps to ensure that his finances are manageable. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on June 9, 2015. Applicant received a complete file of relevant material (FORM) on September 28, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a reply to the FORM on October 27, 2015. I was assigned the case on December 1, 2015.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (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 he 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 Personnel Subject Interview summary. Applicant did not comment on the admissibility of the personal subject interview when he replied to the FORM. Applicant waived any objection to the admissibility of the Personal Subject Interview summary by not providing any comments on admissibility when responding to the FORM. I will consider information in the Personal Subject Interview in my decision.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 42 years old. He received a bachelor's degree in 1994 and a master's degree in 1999. He has been employed as a senior principal human resources project manager for a defense contractor since May 2010. Prior to this position, he was employed by defense contractors as a consultant. He has been married since July 19, 2013. (Item 3, e-QIP, dated May 9, 2014; Item 4, Personal Subject Interview, dated May 24, 2013, Response to FORM, dated October 27, 2015)

The SOR lists, and credit reports (Item 5, dated June 22, 2014; Item 6, dated October 21, 2014; and Item 7, dated May 15, 2013) confirm the following delinquent debts for Applicant: a charged off credit card debt for \$6,683 (SOR 1.a); a credit card debt in collection for \$5,578 (SOR 1.b); a debt in collection for \$1,872 (SOR 1.c); a debt in collection for \$790 (SOR 1.d); a department store account in collection for \$583 (SOR

1.e); a credit card account in collection for \$9,530 (SOR 1.f); a clothing store account charged off for \$184 (SOR 1.g); a checking account in collection for \$126 (SOR 1.h); and an account placed for collection for \$461 (SOR 1.i). The total amount of the alleged delinquent debt is \$25,807.

The only delinquent debt Applicant listed in response to financial questions on the e-QIP he submitted on May 9, 2013, was the repossession and restructuring of the condominium mortgage in February 2008. When Applicant was interviewed by the OPM security investigator on May 24, 2013, he reported that he was behind on the mortgage payments or his condominium in early 2008. The condominium was not repossessed or foreclosed because Applicant was able to restructure the mortgage in August 2008. He sold the property in early 2010, and he reports no outstanding debt from the mortgage. He confirmed to the investigator that he had no other delinquent accounts. (Item 4, Personal Subject Interview, dated May 24, 2013, at 3)

The investigator asked Applicant about debts listed on the credit reports and SOR after Applicant stated that he had no delinquent debts. Applicant agrees with and confirms the delinquent credit card debt at SOR 1.a. The card was opened in 2004 and used to purchase food, clothing, and to travel. It went delinquent in 2008 when Applicant was having financial difficulties with his mortgage. He told the investigator he would review the account and determine a way to pay the account.

Applicant confirmed to the investigator the delinquent debt in collection at SOR 1.b. He used the credit card to purchase food, clothing and to travel. Applicant agreed to look into the account. Applicant could not provide any information on the origin and status of the delinquent accounts at SOR 1.c, 1.d, 1.g, and 1.i. Applicant agreed with and confirmed to the investigator the department store delinquent account at SOR 1.e. He used the card to purchase clothes. He did not list the debt on his e-QIP because he did not realize it was still being reported. Applicant confirmed the credit card debt in collection at SOR 1.f. He used the card for food and airline tickets. He is not making payments on the account since he has not heard from the creditor in many years. He intends to pay the account in the future. He did not list the account on his e-QIP through oversight.

Applicant agrees with and confirmed the delinquent bank account at SOR 1.h. Applicant reported that he closed this account but received a bill from the bank. He disputed the debt with the bank and was told the debt would be removed. Applicant told the investigator that he would check on this debt to see why it is turning up on his credit report. (Item 4, Personal Subject Interview, dated May 24, 2013, at 3-5)

In his response to the SOR, Applicant reported that since the delinquencies were reported in 2008 and 2009, he made significant changes to manage his finances. He sold his condominium that he claims caused the delinquent debts. He consulted an attorney to learn the best way to deal with the delinquencies on his credit reports. He does not indicate when he consulted the attorney. Since the debts were several years old, the attorney advised that it would be more advantageous for him to allow the debts

to age off of his credit reports. He enclosed copies of his three most recent credit reports from June 2015. He noted that there were no additional defaults or charged off accounts since 2008 and 2009. Several of the SOR debts are no longer on his credit report. (SOR 1.a, 1. b, and 1.h) Some of the other debts were to age off the credit reports soon. (Item 2, dated August 22, 2015)

In his response to the FORM, Applicant noted that he has not been employed by the defense contractor listed as his present employer since February 2012, and that he is married. He emphasized that action he has taken on his debts. He reiterated that he consulted an attorney, reviewed all available options, and chose to let the debts age off of his credit reports. This was the most beneficial action for him under the circumstances. (Item 8, undated)

### **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(c), 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 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, thereby raising 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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. 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 not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit reports. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition 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) 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. Applicant did not present any reason why his delinquent debts would not occur in the future. Applicant claims the cause of his delinquent debts was the financial problems associated with the mortgage on his condominium. He presented no documentation to verify his claim or why this circumstance are unusual and beyond his control. He has not paid any of the debts and is waiting for the debts to age off of his credit reports. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence that a debt has been paid. There are still concerns about Applicant lack of action concerning his delinquent debts. The delinquent debts and lack of meaningful action to resolve them indicates that he has not acted reasonably under the circumstances. Applicant has not shown any actions taken to resolve his financial problems. The debts have not been paid, and Applicant has not established a plan to pay the debts. His sole financial action was to wait until the delinquent debts aged off his credit reports.

Applicant has not presented a reasonable plan to resolve his delinquent debts. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the identified debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, 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 the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence 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.

The only derogatory financial information Applicant provided on his security clearance application concerned the mortgage on his condominium.<sup>1</sup> As noted in the SOR and the credit reports, Applicant had other delinquent debts. His failure to list his delinquent debts raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 security eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentional falsification for failing to list any delinquent debts on his security clearance application. He told the OPM investigator that he was unaware of many of the debts. However when confronted with the debts by the security investigator, he was able to provide details on some of the debts. Other debts, he stated he did not recognize. In regard to at least one of the debts, he stated that since he was not confronted by the creditors, he did not remember the debts.

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 it is done knowingly and willfully with intent to deceive. I find that Applicant knew he had delinquent debt when he completed his e-QIP, and deliberately failed to provide correct and accurate financial information on the security clearance application.

I considered the following mitigating conditions under AG ¶ 17:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts:
- (b) the refusal or failure to cooperate, omission, or concealment was caused by or significantly contributed to by improper or inadequate advice

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<sup>1</sup> The SOR at 2.a incorrectly states that he answered "No" to all financial questions. He did disclose the past mortgage issue but no other delinquent debts.

of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstance that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

These mitigating conditions do not apply. Failure to provide full and complete information in response to questions on a security clearance application is not a minor offense. His failure to provide accurate information on his 2013 e-QIP was recent. He had an opportunity to clear the record in 2014 when the security investigator asked him if he had any delinquent debts. He did not acknowledge his delinquent debts until confronted with them by the security investigator. When confronted with the delinquent debts, he was able to relate significant details about some debts that he must have known when he completed the e-QIP. His attorney did not advise him to provide inaccurate information on his debts. The attorney's advice merely went to recommended actions to take to resolve the debts. I find against Applicant as to personal conduct.

### **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(a):

(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 commonsense 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 knew he had delinquent debt when he completed his e-QIP and deliberately failed to provide full and accurate information concerning his finances on his e-QIP. He acknowledged his debts after his

interview with the OPM investigator. He agreed to research the debts and determine his liability for them. He said that he consulted an attorney and decided to let the debts age off of his credit report. He presented no evidence of any action he has taken to resolve the debts. He has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his 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.i:	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