



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-07003  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

01/15/2016

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

**Statement of the Case**

On April 25, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated June 1, 2015, detailing security concerns for financial considerations under Guideline F. 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 June 19, 2015, admitting two and denying six of the eight financial allegations. Department Counsel was prepared to proceed on July 29, 2015, and the case was assigned to me on August 31, 2015. DOD issued a notice of hearing on October 23, 2015, scheduling a hearing for November 3, 2015. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant testified and submitted four exhibits that I marked and admitted without objection into the record without objection as Applicant Exhibits (AX) A through D. I received the transcript of the hearing (Tr.) on November 13, 2015.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 42 years old and has been employed by a defense contractor as a machinist since January 2014. He married in September 2001 and he has two children at home. Applicant's net monthly income is approximately \$2,600. His wife contributes to the household income receiving approximately \$2,100 in net monthly income, for a combined net monthly income of \$4,700. The family monthly expenses are approximately \$4,000. Applicant and his wife place \$200 monthly in savings, and the remaining \$500 is for discretionary expenses and payments. (Tr. 36-38; GX 1, e-QIP, dated April 25, 2014)

The SOR alleges, and court documents (GX 3, dated March 3, 2012) confirm that Applicant filed a Chapter 7 bankruptcy in March 2012 and his debts were discharged in June 2012 (SOR 1.a). The SOR alleges, and credit reports (GX 4, dated May 17, 2014; GX 5, dated May 11, 2015), as well as Applicant's discussion with a security investigator (GX 2, Personal Subject Interview Transcript, dated June 25, 2014) confirm the following medical debts in collection for \$21,253 (SOR 1.b), \$303 (SOR 1.c), \$990 (SOR 1.d), \$116 (SOR 1.e), \$1,930 (SOR 1.f), \$274 (SOR 1.g), and \$543 (SOR 1.h). All of the medical debts in collection are with the same collection agency except for the debt at SOR 1.f.

Applicant was self-employed managing a small automobile repair business from 2005 until 2012. Applicant was the sole employee and his wife helped him at times with administration of the business. They did not draw a salary but used the profits to pay family and personal expenses. In the beginning, the business did reasonably well. The business location was not in a main business area, so Applicant decided to move to a new location that would be better for his business. His business expenses increased. About the same time, the economy went down and Applicant did not have sufficient business to meet his expenses. He was using business credit cards and personal credit cards to pay his expenses and meet the family needs. When he could no longer make ends meet, Applicant consulted an attorney and filed a Chapter 7 bankruptcy for his personal and business debts. (SOR 1.a) His business and personal debts resulting from

the business were discharged in June 2012. (Tr. 19-24, 44-48; GX 2, Personal Subject Interview, dated June 25, 2014; GX 3, Bankruptcy Court Documents, dated June 2012)

Applicant and his family moved to his present location in 2012 after closing his business. He found work as a carpenter with a small company. The company did not provide health insurance and Applicant could not afford a private health insurance policy. In January 2013, Applicant became sick requiring hospitalization and he incurred a large hospital debt. The remaining debts in the SOR are a result of the medical debts and total approximately \$28,000.

The hospital took a few months to tally all of his bills before asking Applicant for payment. When he received the bill, he tried to work with the hospital to get relief or set up a reasonable payment plan. He was advised by hospital administrators that he did not qualify for any of their debt reduction programs. He offered to pay \$200 monthly on the debt, but the only payment plan they offered was for \$500 monthly. Applicant could not afford this level of monthly payment. The hospital turned over all of the debts to a collection agency.

It took the collection agency a few months to get in contact with Applicant after receiving the debts from the hospital. The collection agency consolidated most of the debts into one large debt as reflected in SOR 1.b. There were still small debts that were not consolidated and were outstanding. One debt (SOR 1.f) was sent to a different collection agency. Applicant negotiated with the collection agency holding most of the debts to reach a payment plan that he could afford. After extensive discussions, they agreed on a plan in May 2015. Applicant and the collection agency agreed to a monthly payment plan of \$100. Applicant has been making these payments since June 2015. The collection agency has been paying the debts starting with the smallest one first. The collection agency has also made some payments towards the largest debt at SOR 1.b. Applicant provided documents in his response to the SOR that the debts at SOR 1.c, 1.e, and 1.g have been paid in full and resolved by the collection agency. He also provided documentation that the debts at SOR 1.d and 1.h are now being paid by the collection agency. (AX A, B, and C, Account Statements, various dates)

Applicant negotiated a payment plan for the debt listed at SOR 1.f held by the other collection agency. He pays that collection agency \$50 a month on the debt. (AX D, Statement, dated October 1, 2015) Applicant's debts are paid or being paid. (Tr. 24-35, 30-44, 52-57; GX 2, Personal Subject Interview, dated June 25, 2014)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. 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 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 at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had financial difficulties after his small business failed, he moved, and became ill requiring hospitalization without the benefit of health insurance. Applicant's history of delinquent debts is documented in his credit reports and his OPM interview, and his testimony at the hearing. Applicant's delinquent debts are a security concern. 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 evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations 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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances; and

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

Mitigating conditions AG ¶¶ 20(a), (b), and (d) apply. Applicant incurred delinquent debt after his small business failed and he had to file a Chapter 7 bankruptcy. Bankruptcy is a legal and permissible means of resolving debt. Applicant's financial situation from his failed small business was correctly resolved by bankruptcy discharge. Applicant incurred other delinquent debt when he became ill and required hospitalization. He did not have health insurance at the time. Hospital and medical debts will not recur since Applicant is working for an employer who provides excellent health insurance coverage. His illness and his lack of health insurance were conditions beyond his control. He has acted reasonably under the circumstance. He contacted the

hospital when he received his bill. He tried to negotiate a payment plan that he could afford. He was unsuccessful and the hospital turned the debt over to collection agency. Applicant worked with the collection agency to negotiate a reasonable payment plan.

Applicant established his good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant has established a meaningful track record of debt payment. He presented supporting information that he has payment plans with two collection agencies. Under one of the plans, he presented sufficient information that three of the debts have been paid (SOR 1.c, 1.e, and 1.g), and three debts are being paid under the payment plan (SOR 1.b, 1.c, and 1.h). One debt (SOR 1.f) is being paid under a payment plan to the other collection agency. By paying and being current with his debts, Applicant has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances.

Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a security clearance 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 incurred delinquent debt due to conditions beyond his control. He presented evidence that he paid or is paying his debts under agreed payment plans. This information shows Applicant's responsible management of his finances. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

### **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.h           For Applicant

### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge