



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



In the matter of:

	)	ISCR Case No. 15-02880
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

06/27/2016

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**Decision**

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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 November 29, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 30, 2013. (Item 6) 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 October 19, 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 received the SOR on October 30, 2015. He answered the SOR on October 31, 2015, admitting the nine financial allegations with explanation. He admitted the personal conduct allegation, but his explanation is actually a denial of the allegation. I find that he denied the personal conduct falsification allegation. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on December 15, 2015. Applicant received a complete file of relevant material (FORM) on January 11, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a reply to the FORM. I was assigned the case on March 29, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 6) 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. 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 Personal Subject Interview summary. Applicant did not respond to the FORM, so he waived any objection to the admissibility of the Personal Subject Interview summary. 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 a 37-year-old computer technician seeking employment with a defense contractor who is sponsoring him for a security clearance. This is his first request for a security clearance. He attended a technical school from 2008 to 2010 and received an associate's degree. He is married with three children. It is not clear if he is now employed while waiting for the outcome of his request for a security clearance. (Item 4, e-QIP, dated November 29, 2012; Item 6, Personal Subject Interview, January 30, 2013)

The SOR lists, and credit reports (Item 5, dated December 14, 2014; and Item 7, dated March 6, 2015) confirm the following delinquent debts for Applicant: a student loan for \$20,649 (SOR 1.a); a car repossession debt for \$10,107 (SOR 1.b); a cell phone debt in collection for \$1,289 (SOR 1.c); a student loan for \$1,228 (SOR 1.d); two credit card debts in collection by the same creditor for \$780 (SOR 1.e) and \$661 (SOR

1.f); a store debt in collection for \$332 (SOR 1.g); and a cable debt in collection for \$224 (SOR 1.h). The amount of delinquent debt is \$35,280. Of that amount, \$21,877 is for student loans. Also listed is a Chapter 7 bankruptcy filed in March 2010 with debts discharged in July 2010. (SOR 1.i)

Applicant told the security investigator that the reason for his delinquent debts is that he did not make enough money to meet all of his obligations. He spends his money on family living expenses. He described his financial condition as somewhat stable.

Applicant did not list any delinquent debts on the e-QIP he submitted on November 29, 2012, in response to financial questions concerning delinquencies on routine accounts, debts in collection, defaulted loans, charged off accounts, and accounts delinquent more than 120 days. He reported the July 2010 Chapter 7 bankruptcy discharge. He noted that the bankruptcy debts were all old debts and were discharged in the bankruptcy. (Item 4, Personal Subject Interview, dated November 29, 2012, at 6-8) It is noted that some of the bankruptcy debts were delinquent student loans that cannot be discharged in bankruptcy. He reported to the security investigator that he had no delinquent debt. A December 2012 credit report (Item 5, dated December 14, 2012) showed that at the time he completed the e-QIP, Applicant had several accounts in collection including accounts opened after the bankruptcy discharge. The debts included an automobile loan opened in June 2012 that was delinquent by November 2012. A later credit report (Item 7, dated March 6, 2015) listed additional delinquent debts.

In response to the SOR, Applicant acknowledged that he had delinquent debt that he needed to pay but that he did not have the funds to pay the debts. He is seeking a security clearance so he can work and pay the debts. All the SOR debts are still outstanding. Applicant has not presented a plan to resolve his delinquent debts.

### **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. The delinquent debts were incurred in the normal course of everyday living and were not caused by conditions beyond Applicant's control. In addition, Applicant has not established that he has acted reasonably and responsibly under his financial circumstances. Applicant also did not indicate that he received financial counseling.

There are security concerns about Applicant's lack of action concerning his delinquent debts. The existence of delinquent debts and lack of meaningful action to resolve them indicate that he has not acted reasonably under the circumstances. This is clearly illustrated by Applicant securing an automobile loan after bankruptcy discharge that was in default within five months.

Applicant's debts have not been paid, and Applicant has not presented a reasonable plan to resolve his financial problems. 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 an indication that he may 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.

Applicant did not provide any derogatory financial information on the e-QIP, except to note that he had filed a Chapter 7 bankruptcy. As noted in the SOR and the credit reports, Applicant had significant 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, at the time he completed the e-QIP, had to know he had delinquent debt. He filed a bankruptcy two years previously and he knew, at a minimum, that his student loans had not been discharged. He also had to know he had financial problems. He recently had taken out an automobile loan that he had not paid on a regular basis. Within a few weeks of completing the e-QIP, that loan went into default.

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. Based on the knowledge Applicant had concerning his finances and his delinquent accounts, I find that Applicant knew he had delinquent debt when he completed his e-QIP. Since he had this knowledge, the only reason not to disclose the financial information was to deceive security adjudicators of the true state of his finances. Applicant deliberately failed to provide correct and accurate financial information on the security clearance application.

I considered the following mitigating condition 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 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 circumstances 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. This failure to provide accurate information was recent and frequent. Applicant failed to provide accurate information in reference to his finances on his security clearance application in November 2012 and again in response to questions from the security investigator when he told him that his finances were good and his debts current. He has not yet provided correct financial information.

### **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. Applicant 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