



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



In the matter of: )  
)  
) ISCR Case No. 14-06245  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2016

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny him eligibility for access to classified information. Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the facts proven by the written record concerning his history of financial problems. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on July 2, 2015, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On November 2, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA)

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<sup>1</sup> 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 within the DoD on September 1, 2006.

Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated January 11, 2016. The FORM contained six attachments (Items). On January 28, 2016, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on March 30, 2016.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted owing six of the SOR delinquent obligations, denied five debts, and neither admitted nor denied the obligation listed in SOR 1.j. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 56-year-old senior technician who has worked for a defense contractor since January 2014 and seeks to obtain a security clearance. (Item 3) Before that, he worked as a residential technician for another federal contractor from 2012 to 2014. And previously, he was a field engineer working for another federal contractor from April 2004 to May 2012. From May 2012 through July 2012, he was unemployed. (Item 4) In other words, except for the three months in 2012, he has been continuously employed for approximately the last 12 years, at least. (Item 3)

Applicant is currently married and has three children ages 15, 29, and 30. In 2012, Applicant's wife lost her job and, as of September 2014, was still attempting to find full-time employment. (Item 4) He was previously divorced in April 1990. (Item 3)

In Applicant's June 2014 Electronic Questionnaire for Investigations Processing (e-QIP), he does not indicate any financial difficulties or delinquencies. (Item 3) He stated he was unaware of the debts because his wife handles the household's finances. (Item 4) In his 2014 Enhanced Subject Interview (ESI), he stated during 2012, when his wife lost her job, he had failed to have sufficient funds withheld from his income. He asserted, but never documented, that he timely filed both his 2012 and 2013<sup>2</sup> federal tax returns and was informed by the IRS that he owed approximately \$4,000 for these two years. (Item 4)

After being informed the IRS would start garnishing his wages, Applicant agreed to pay 15% of his income on a biweekly basis. (Item 4) He also asserted he timely filed his state tax returns, but owed additional tax to the state. He asserts he established a repayment plan with the state and is making \$30 monthly payments. (Item 4) He provided no documentation indicating he had filed his 2013 state and federal income tax returns (SOR 1.m) or that he made payment on any repayment agreement.

When questioned about the delinquent accounts on his October 2012 credit report, Applicant stated he did not recognize or was unaware of many of the debts. He

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<sup>2</sup> In Applicant's SOR response he denied failing to file his 2013 state and federal income tax forms and he had received an extension and properly filed his income tax returns. (Item 2)

believed he had established a repayment agreement for the debt listed in paragraph SOR 1.i (\$3,628) and was making \$50 monthly payments. (Item 4) Applicant admitted some of the delinquent obligations in his answer to the SOR. Further, these matters are established by credit reports, which were obtained during the security clearance process in June 2014 and May 2015. As of September 2014, he asserted he would contact his creditors and attempt to establish repayment plans.

In Applicant's November 2015 SOR response, he stated two of the debts (SOR 1.f, \$1,708 and SOR 1.h, \$1,830) were almost paid. (Item 2) However, his June 2014 and May 2015 credit reports show no reduction on the amount owed for SOR 1.f. (Items 5, 6) Additionally, his May 2015 credit report reflects the department store debt listed in SOR 1.h has a zero balance, but also lists \$1,830 as having been charged off. (Item 6) In his SOR response, he indicated the 120-day-past-due mortgage amount (SOR 1.g, \$12,200) was part of a modification. (Item 2) His credit reports indicate he is current on his student loans and numerous other accounts.

Applicant has not provided documentation showing that the delinquent SOR obligations are paid, settled, subject to a repayment agreement, in dispute, cancelled, forgiven, or otherwise resolved. His various claims and assertions in his answer to the SOR are not supported by documentation. Applicant did not provide documentation in reply to the SOR or the FORM.

### **Law and 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 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 to obtain 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is

inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owes more than \$27,000 for an unpaid judgment, seven collection accounts, three charged-off accounts, and one delinquent account that is more than 120 days delinquent. Applicant denied failing to file his 2013 state and federal income tax returns in a timely manner and the record fails to support that he was delinquent in the filing of his income tax returns. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 mitigating factors for financial considerations fully apply. Applicant's financial difficulties are both recent and multiple. He has been employed, except for three months in 2012, since 2004. In July 2014, he was made aware of the Government's concerns about his delinquent debt. He provided no documentation showing payment on any of his debts, not even the \$145 debt (SOR 1.I). By failing to make payments he has failed to act responsibly under the circumstances. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. There is no showing of a good-faith effort to satisfy the delinquent obligations.

The evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F. I reach that conclusion based on the findings of fact that show Applicant has done very little to address his financial problems. With that said, I have little concern about the two medical collection accounts for a total of \$297. First, it is presumed that these debts were incurred for necessary medical expenses as opposed to frivolous or irresponsible spending. Second, all the amounts are minor, \$172 and \$125, which is indicative of co-payments and the like in medical billing.

AG ¶ 20(b) does not apply. Applicant states in 2012 his wife lost her job and as of 2014 was still looking for full-time employment. This is a factor beyond his control, but he has made no payments or even documented that he has had recent contact with his creditors. The mitigating condition listed in AG ¶ 20(c) does not apply since there is no evidence he received financial counseling, nor is there a clear showing that his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because he has failed to document payment on any of the delinquent accounts.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 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 has failed to document any payment on his delinquent accounts. He has been aware of the Government's concern about his delinquent debts since July 2014, which was reinforced by the July 15, 2015 SOR. None of the SOR debts have been paid, nor is there is evidence indicating he has recently contacted his creditors.

In requesting a decision without a hearing, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement

the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on his scant responses to the SOR, he failed to mitigate the financial considerations security concerns.

Applicant has not presented sufficient information to rebut, explain, extenuate, or mitigate the facts proven by the written record. The totality of the written record does not show that Applicant has a reasonable plan to resolve the delinquent debts or that he has demonstrated a firm commitment to adhering to such a plan. The concern over Applicant's problematic financial history creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraphs 1.b and 1.c: For Applicant

Subparagraphs 1.d – 1.l: Against Applicant

Subparagraph 1.m: For 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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge