



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



In the matter of: )  
)  
) ISCR Case No. 06-13607  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Department Counsel  
For Applicant: *Pro Se*

July 24, 2008

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant owed debts totaling approximately \$17,000. Applicant has paid a \$9,000 tax lien, which is more than half of the amount owed. He has established a repayment plan with an additional creditor and is attempting to establish repayment plans with the two remaining creditors. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. Clearance is granted.

**Statement of Case**

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant a Statement of Reasons (SOR) on January 24, 2008, detailing security concerns under Guideline F, financial considerations.

On February 26, 2008, Applicant answered the SOR, and requested a hearing. On March 17, 2008, I was assigned the case. On June 6, 2008, DOHA issued a notice of hearing scheduling the hearing held on June 26, 2008. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through D, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On July 10, 2008, additional documents were received. There being no objection, the material was admitted into evidence as Ex. E. On July 7, 2008, the transcript (Tr.) was received.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.b, 1.d, 1.e, and 1.i of the SOR. He admitted the factual allegations in ¶¶ 1.c, 1.f, 1.g, and 1.h of the SOR. Applicant neither admitted nor denied the allegations in SOR ¶ 1.a, simply stating "Unknown."

Applicant is a 59-year-old master truck driver who trains other truck drivers and has worked for a defense contractor since February 2008. He is seeking to obtain a security clearance. In 1989, Applicant retired from the U.S. Army as a Chief Warrant Officer 3 after 23 years of service. (Tr. 30, 33)

In April 1994, Applicant was divorced. His ex-wife receives approximately \$1,100 of Applicant's military retirement. (Tr. 31, Ex. E) There were no minor children of the marriage. In August 1994, he married his current wife. Applicant and his wife are enrolled in TRICARE for Life. His wife receives social security and her medical expenses are covered in part by Medicare. Applicant's and his wife's monthly medical expenses not covered by Medicare or TRICARE for Life average \$475.

From 1995 until June 2004, Applicant worked as a mechanic and bus driver. From June 2004 until May 2006, he was a lead quality control inspector. From June 2006 to October 2006, Applicant was unemployed. (Tr. 73, Ex 1) Applicant was able to meet daily living expenses with his unemployment pay and military retirement pay, but had difficulty making his minimum payments on his credit cards. (Tr. 78) He asked the credit card companies for assistance and they responded by raising the interest rates on his cards. (Tr. 54)

Applicant is paid \$15.00 an hour. His current gross salary for two weeks is \$1,505. (Tr. 60, Ex. E) Applicant owes a farm and home with a fair market value of \$50,000 on which is owed approximately \$43,000. (Ex. 1) His mortgage is approximately \$200 per month. (Tr. 62) He has no car payments on his 1996 pickup truck or his wife's 2001 pickup. (Tr. 63, 67-68) In September 2007, Applicant completed a personal financial statement listing his net monthly remainder income at approximately \$1,000. (Ex. 2)

In February 2005, a judgment (SOR ¶1.a, \$1,873) was filed against Applicant for two credit card debts. In September 2007, Applicant first learned of the judgment when he received written interrogatories. (Ex. 2) Applicant contacted the creditor and is waiting for a reply. Following the hearing, he was going to review this judgment at the county courthouse. (Tr. 76)

A medical group lists a \$54 debt (SOR ¶1.c) owed by Applicant. Applicant's credit report shows two medical debts (SOR ¶1.d, \$36; SOR ¶1.e, \$122) not further identified. In February 2008, Applicant sent the credit reporting agency a letter asking for more information about the debts. (Ex. B) Applicant's medical insurance is TRICARE, which has told him not to immediately pay any medical bills when they are received for it takes TRICARE 45 days or longer to make payment and to notify individuals the amount it is paying on the debt. (Tr. 46) For his wife's medical bills, any amount not paid by TRICARE is paid by Medicare. Applicant has received refunds for overpayment of his medical bills. (Ex. E)

In 2004, Applicant received a federal tax lien (SOR ¶1.b, \$9,111, Ex. A) for tax year 2001. The lien has been paid by the IRS garnishing his wages and interception of his tax refunds, which was applied to the amount owed. (Tr.38, 39) The lien has been paid and Applicant received a \$1,472 refund. (Ex. A)

Applicant admits owing a \$2,218 credit card company judgment (SOR ¶1.f). In February 2008, Applicant sent the company a letter asking to establish a repayment plan. Applicant owes a credit card company \$1,817 (SOR ¶1.h). The company has made a settlement offer and Applicant has accepted the offer agreeing to pay \$50 per month. (Ex. E). The debts in SOR ¶1. a and SOR ¶1.g are the same debt. (Ex. E) Applicant paid his past due telephone bill (SOR ¶1.i, \$116). and maintains service with the same company. (Tr. 52, Ex. C)

Applicant owes three debts totaling approximately \$6,000. A summary of those debts follows:

	Creditor	Amount	Current Status
a	Credit cards judgment filed February 2005.	\$1,873	This is the same debt as SOR ¶1.g. (Ex. E) Applicant was going to review the judgment at the courthouse. (Tr. 76)
b	IRS federal tax lien filed September 2005.	\$9,111	Released October 17, 2007. (Ex. A)
c	Medical group debt.	\$54	Paid. Applicant has medical insurance.
d	Medical account.	\$36	Paid. Applicant has medical insurance. (Ex. B)
e	Medical account.	\$122	Paid. Applicant has medical insurance. (Ex. B)
f	Credit card debt.	\$2,218	Applicant sent letter requesting a repayment plan.

g	Credit card debt.	\$1,884	This is the same debt as SOR ¶1.a. (Ex. E)
h	Credit card debt.	\$1,817	Creditor has accepted repayment offer and Applicant is making payment. (Ex. E)
i	Telephone bill.	\$116	Paid. Zero balance. (Ex. C)
	Total debt listed in SOR.	\$17,231	

### Policies

When evaluating an Applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 protect or 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.

Section 7 of Executive Order 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

Under Guideline F for financial considerations, a security concern typically exists due to significant unpaid debts. 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.<sup>2</sup>

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 upon terms. Absent evidence of strong 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 the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly safeguarding and handling 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.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owed approximately \$17,000 on nine debts, some of which were duplicate debts. Disqualifying conditions AG ¶ 19(a) “inability or unwillingness to satisfy debts” and AG ¶ 19(c) “a history of not meeting financial obligations,” apply.

The largest of the debts listed in the SOR was a \$9,111 tax lien (SOR ¶1.b), which has been paid and released. As retired military, Applicant and his spouse are covered by TRICARE medical insurance. Additionally, his wife is covered by Medicare. His military medical insurance and Medicare coverage addresses the three medical debts (SOR ¶1.c, \$54, 1.d, \$36, and 1.e, \$122). The telephone bill listed in SOR ¶1.i (\$116) has been paid. Applicant provided no documentation but maintains telephone

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<sup>2</sup> Revised adjudicative guidelines (AG) ¶ 18.

service with the same provider. If a delinquent debt did exist his telephone service would routinely be interrupted.

Applicant has accepted a repayment offer related to SOR ¶1.h (\$1,817). Applicant has written the creditor in SOR ¶1.f (\$2,218) to set up a repayment plan. The two debts listed in SOR ¶1.a (\$1,873) and SOR ¶1.g (\$1,884) are the same debt. Applicant has written the creditor and is going to the county courthouse to review the judgment.

Mitigating condition AG ¶ 20(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,” has limited applicability. Applicant was unemployed from June 2006 to October 2006. When he asked his credit card providers for assistance, they increased the interest rate on his credit cards. He is now addressing his debts and attempting to establish repayment plans with all of his creditors.

Mitigating conditions 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,” applies. Applicant is addressing the debt and his delinquencies are not likely to recur.

There is no evidence Applicant has sought financial counseling, but has demonstrated a positive change in his financial management. The problem is being resolved or under control. AG ¶ 20 (c) “the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control,” applies as does AG ¶ 20 (d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

For AG ¶ 20 (d) to apply there must be an “ability” to repay the debts, the “desire” to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed. Applicant has paid the largest of the debts, the tax lien, which was more than half the total delinquency. He has accepted a repayment offer on another debt and is attempting to establish repayment plans on the remaining debts. He has the desire to pay his bills.

### **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 the 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) 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.

Appellant has acted responsibly to resolve his debts and improve his current financial picture. He intends to resolve his financial problems and his resolve appears to be genuine. He is 59-years-old and a mature, responsible adult who acting to ensure his past financial difficulties will not recur. Appellant is making monthly payments on one debt, is attempting to establish repayment plan on the two remaining debts, which total approximately \$4,000, and the remainder have been paid. Overall, the record evidence leaves me without questions or doubts as to Appellant's eligibility and suitability for a security clearance.

The facts and circumstances presented do not pose an unacceptable risk to the interests of national security. For all these reasons, I conclude Appellant mitigated the security concerns arising from his financial considerations concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis supports a favorable decision.

### **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

    Subparagraph 1.a-1i:           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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CLAUDE R. HEINY II  
Administrative Judge