



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-00169 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

06/19/2014

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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 his eligibility for a security clearance to work in the defense industry. He is delinquent on more than \$50,000 of student loans and has four other unpaid collection accounts. He has failed to mitigate the financial considerations security concerns. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on February 27, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On March 26, 2014, Applicant answered the SOR and elected to have the matter

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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.

decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated April 23, 2014. The FORM contained six attachments (Items). On April 25, 2014, 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. In an undated response received prior to June 5, 2014, Applicant responded to the FORM and submitted three documents. Department Counsel did not object to the documents, which were marked and admitted into the record as Exhibits (Ex.) A – C. On June 16, 2014, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer (Answer) to the SOR, he admits the seven debts, states they occurred "a long time ago" and were the result of financial hardship. He asserted the debts were in a repayment program and he intended to be fully caught up on his debts by December 2014. (Answer) 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 33-year-old desktop specialist who has worked for a defense contractor since March 2011 and seeks to obtain a security clearance. (Item 4) He is single and has one daughter born in January 2009. (Item 4) In February 2011 and March 2011, he was unemployed. From September 2005 through January 2011, he was employed for a federal contractor as a hardware support technician.

From June 1999 through August 2005, Applicant worked as an aftercare assistant director for a school. (Item 4) At night, he attended a university from September 1999 through June 2003, but did not receive a diploma. (Items 4, 6) In his August 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he stated he was delinquent on approximately \$43,954 in student loans (SOR 1.b, \$21,608 and SOR 1.c \$29,087). (Item 4) He asserted he had to help his mother take care of his siblings after his mother lost her job. (Item 4) At that time, he was "working on getting into a program to repay" the student loan debt. (Item 4) In the same e-QIP, he stated a bank account (SOR 1.a, \$1,265) had been turned over for collection. (Item 4) He stated he was working to settle this debt. (Item 4)

Applicant provided no additional information as to the financial hardship caused by his mother losing her job. He does not provide a date as to when this event occurred, nor does he provide documentation showing the impact this event had on his ability to pay his debts in a timely manner.

In September 2013 and October 2013, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). (Item 6) In October 2013, he completed a Personal Subject Interview (PSI). (Item 6) He stated in October 2013, he would start making payment as part of a repayment program to address his

delinquent student loans. After paying \$350 monthly for six months, the loans would be considered current.

In Applicant's October 2013 PSI, he stated he was talking with two collection firms and wanted to settle and pay the debt listed in SOR 1.a (\$1,200). (Item 6) He said he thought this was the same debt as the debt listed in SOR 1.g (\$1,200), but provided no documentation supporting this assertion. He said he thought the debt in SOR 1.f (\$323) had been paid because the collection firm had stopped calling him or sending him letters. (Item 6) In his September 2013 PSI, he said he had no knowledge about the two telephone service debts listed in SOR 1.d (\$493) and SOR 1.e (\$478). (Item 6)

In his response to the FORM (Response), Applicant stated he was working with a credit repair firm to address his debts. He submitted a one-page welcome letter from the company stating the firm would help Applicant receive his credit reports and would start working on his case. (Response) There is no documentation showing any agreement with the company, payment to the company, which delinquent accounts were to be addressed by the company, or what the company had done or would do to assist Applicant. He also submitted an email for a free-online course called "Managing my money." (Response) The course was to start on May 12, 2014. Applicant failed to provide documentation that he took the course or what he learned from that course.

### **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 *also* 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 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 his finances to meet his financial obligations.

Applicant has more than \$50,000 of delinquent student loans. He also has four collection accounts that remain unpaid. 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.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control other than his two months of unemployment in 2011 and his assertion that he had to help take care of his siblings when his mother lost her job. He has provided no documentation showing payment on any of his debts. Even the three smaller debts of less than \$500 each remain unpaid. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He provided an email showing he was going to take a free online money management course. However, he never said he completed the course or what he learned about financial management from the course. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

Applicant asserts he is currently in a program to resolve his delinquent debts. He provided limited documentation about this program. In September 2013, he said he had arranged a repayment agreement to bring his delinquent student loans out of default.

Payment was to begin following his October PSI. He provided no document to show any payment on his student loans.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant has been asked about these obligations starting in September 2013. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant was unemployed for two months in 2011 and, at some date not listed in the record, he helped support his siblings. These are events beyond his control; however, he failed to establish how two months of unemployment three years ago and helping support his siblings at some date have impacted his current ability to pay his debts. He has failed to show any payment on the seven delinquent debts.

The mitigating condition listed in AG ¶ 20(c) does not apply. Signing up for an online personal financial management course is insufficient to establish Applicant has received financial counseling. Additionally, there is no clear showing that his financial obligations are being addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account. He asserted that the debts listed in SOR 1.a and SOR 1.g maybe the same debt, but provided no documentation supporting this assertion.

### **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. The majority of the debt set forth in the SOR was not incurred on luxuries, but for student loans. This is not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. However, Applicant has failed to document any payment on those loans. He has been aware of the Government's concern about his delinquent debts since his October 2013 PSI, which was reinforced in the February 2014 SOR. Even the \$323 collection debt (SOR 1.f) has yet to be paid. Since receiving the February 2014 SOR, the only documented action related to his delinquent accounts is that he contacted a credit repair firm and was planning on viewing an online personal financial management course.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts which 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 paragraph of explanation in response to the SOR, his paragraph of explanation in response to the FORM, and two emails, he failed to mitigate the financial considerations security concerns.

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. Applicant expressed the hope that all of his financial difficulties would be resolved by December 2014. 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.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations, criminal conduct, and 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: 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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge