



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



In the matter of: )  
)  
) ISCR Case No. 12-07819  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

02/01/2013

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s intent to deny his eligibility for a security clearance to work in the defense industry. The 15 charged-off or collection accounts alleged in the Statement of Reasons (SOR), totaling more than \$118,000, remain unresolved. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on October 5, 2012, the DoD issued an SOR detailing security concern. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On October 20, 2012, Applicant answered the SOR and requested a hearing. On November 27, 2012, I was assigned the case. On November 28, 2012, DOHA issued a Notice of Hearing for a hearing convened on December 5, 2012. I

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

admitted Government's Exhibits (Ex) 1 through 10 and Applicant's Exhibits A through E, without objection. On December 13, 2012, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied the factual allegations as to charged-off and collection accounts listed in SOR ¶ 1.b, 1.g, 1.h, 1.j, and 1.k, which total approximately \$13,000. He admitted the remaining allegations. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 57-year-old computer support technician who worked for a defense contractor until terminated in August 2012, due to his lack of a security clearance. (Tr. 30) Applicant called no witnesses other than himself, and he produced no work or character references.

Following high school graduation, Applicant served two years in the U.S. Air Force. In 1982, he joined the U.S. Army and retired in 2002 as a sergeant first class (E7). (Tr. 19, 20) He retired with a sixty percent disability. (Tr. 52) Until Applicant's retirement, he maintained good credit. His wife handled the household finances. Five days after retirement, he was in southwest Asia working for a defense contractor and remained with the contractor for 13 months. (Tr. 22) He paid off all of his prior debts and had a "significant" amount of money in the bank. (Tr. 23) In February 2008, due to company restructuring, he lost his job and was unemployed until September 2009. (Tr. 23, 42) He remained unemployed. (Tr. 43) During his unemployment, he used his credit to save his home. In September 2009, he obtained a job with a defense contractor as a desk-side IT (Information Technology) support. (Tr. 20) The companies have changed, but Applicant remained in the same job.

Applicant's monthly retirement take-home pay is \$1,865 and his monthly disability take-home pay is \$1,075. However, the Department of Veterans Affairs (VA) believes Applicant was overpaid and he currently receives only \$30 monthly in disability pay. (Ex. A, Tr. 27) He has submitted paperwork to the VA attempting to correct the problem and believes once the problem is corrected he will receive a \$6,000 lump-sum payment.. (Tr. 27) His wife works in customer service for a health care provider, and her take-home salary is approximately \$820 every two weeks. (Tr. 27, 28) When employed full time with the defense contractor, he was receiving \$1,876 every two weeks for an annual income of \$60,000 to \$70,000. (Tr. 28)

Applicant net monthly income (excluding any salary as a contractor) is approximately \$5,230 and his monthly expenses are approximately \$5,200. (Ex. B) Prior to his termination, he had money to apply on his past-due obligations. (Tr. 59) He provided no documentation of having made payments.

After obtaining employment in 2009, Applicant contacted his creditors. Some would work with him and others demanded total payment. (Tr. 24) Because of uncertainty in the work place, he was unwilling to commit to monthly payments not

knowing if he would be able to make the payments. (Tr. 24) His goal is to pay his creditors. He knows that, at some point, he will have enough funds to pay his past-due accounts. In 2009, Applicant considered filing for bankruptcy protection. (Tr. 25)

The largest of Applicant's unaddressed obligations is a \$59,000 debt-consolidation loan obtained in May 2006. (Ex. 3, 4, Tr. 31) His goal was to consolidate his obligations and make \$1,000 monthly payments to pay off the loan. (Tr. 41) His January 2007 credit bureau report (CBR) lists this debt as "pays as agreed." (Ex. 2, Tr. 38) After becoming unemployed in 2008, the account went to collection.

Applicant denied two department store accounts placed for collection (SOR 1.g, \$1,210 and SOR 1.h, \$841). He said he cancelled his credit cards with the store, and his wife is current on her store credit card. (Tr. 45) No documentation was received showing the accounts were current. The account listed in SOR 1.j (\$2,108), which he denied owing, is listed in his CBR as having been sold to another lender. (Tr. 47) The same amount (\$2,108) appears as a collection account in SOR 1.m, which he admitted owing. At the hearing, Applicant stated he would investigate to determine if these two debts are the same obligation. No documentation has been received about this debt.

The majority of Applicant's outstanding obligations were for general living expenses. He has no payment plan or arrangement to pay any of the accounts. He intends at some future date to negotiate and pay his obligations. (Tr. 50)

In 1977, Applicant married and they have two daughters born in 1984 and 1986. His son was born in 1990. (Tr. 40) Only his son, who has just started college, lives with him and his wife. (Tr. 40)

### **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 interests of 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 a history of financial problems. Applicant has 15 unaddressed charged-off or collection accounts totaling approximately \$118,000. He denies owing five of the debts, which total approximately \$13,000. 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 owes \$118,000 in delinquent debt. Although he denied five SOR debts he failed to provide any documentation supporting his assertion the debts were no longer owing. The allegations are supported by the credit reports in the record (Ex. 2, 3, 4, 6, and 7) and his response to interrogatories (Ex. 5) Applicant has a history of not paying his debts and currently has an inability to do so. Applicant's indebtedness was caused by a period of unemployment. Although Applicant receives the benefit of some mitigating evidence, these facts are not sufficient to overcome the Government's *prima facie* case against him. Applicant may have the desire and intent to repay his delinquent debts; he does not have the means to do so. Although Applicant is in a difficult situation, the security concerns in this case cannot be mitigated by the personal hardships that

may be caused by losing his security clearance<sup>2</sup> nor by his promise to repay his debts at some future date should he be able to return to his job.<sup>3</sup>

Applicant has expressed a desire to pay his debts, but the mere desire to repay debts without further action in addressing the debts is insufficient to warrant applying this mitigating condition. The decision to grant or deny a security clearance must be based on past conduct and not speculation as to future hopes and desires. A promise however credible and sincere to take remedial steps in the future does not constitute evidence of demonstrated reform and rehabilitation.<sup>4</sup>

Mitigation consists of progress in addressing past-due obligations by establishing a “meaningful track record” in addressing his past-due and collection accounts. The concept of “meaningful track record” includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant’s financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. Here, Applicant has no plan to address his delinquent accounts other than his hope that he will be able to repay them at some future date.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he 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.

For AG ¶ 20(b) to apply, the financial problem must be largely beyond the person’s control, which it was, and he must have acted responsibly under the circumstances, which he has not. Applicant experienced a long period of unemployment ending in August 2009. During his unemployment he used credit cards to pay general living expenses and keep his home from foreclosure. During the three years he was employed, following his unemployment, he did not address his past-due obligations. Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge must still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR

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<sup>2</sup> See ISCR Case No. 08-10238 at 3 (App. Bd. Dec. 18, 2009); ISCR Case No. 08-10079 at 3. (App. Bd. Dec. 10, 2009), and ISCR Case No. 08-00899 at n.1 (App. Bd. Jul. 29, 2008).

<sup>3</sup> See, e.g., ADP Case No. 07-13041 at 4 (App. Bd. Sep.19, 2008); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999).

<sup>4</sup> See, e.g., ISCR Case No. 96-0544 (May 12, 1997) at p. 5.

Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007)(citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999). Applicant has failed to act reasonably by not addressing his delinquent debt during the three years he was employed.

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis for the five accounts he disputes.

### **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. During his three years of employment, he failed to address his delinquent accounts. Now that he is again on unemployment compensation, he has even less funds with which to address those accounts. The issue is not simply whether all his debts are paid—they remain unpaid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1)) For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

An adverse decision in this case is not a finding that Applicant does not possess the good character required of those with access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.<sup>5</sup> Nor should this decision 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

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<sup>5</sup> ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); See also *Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).

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. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

### **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.o: 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