



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-09590
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

11/15/2015

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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. The Statement of Reasons (SOR) alleges he is approximately \$97,000 past due on a home mortgage and has two delinquent charged-off accounts, which total more than \$14,000. He provided no documentation of payment on his delinquent obligations. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

**History of the Case**

On May 21, 2015, acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the DoD issued a Statement of Reasons detailing security concerns. On June 5, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing.

<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.

The Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated May 21, 2015. The FORM contained five attachments (Items). On August 21, 2015, 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 was informed he could submit any material he wished to be considered. DC had no objection to his timely response to the FORM. (FORM Answer) On October 13, 2015, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted being delinquent on the mortgage of his rental property and denied two charged-off accounts asserting he was the victim of identity theft. He also asserted the mortgage debt listed in SOR 1.a and the mortgage debt listed in SOR 1.d were the same obligation. 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 43-year-old senior Windows administrator who has worked for a defense contractor since November 2011 and seeks to retain a security clearance. (Item 3, FORM Answer) He had been unemployed from April 2004 through October 2004. (Item 2) He provided no information about his duty performance and provided no character reference letters.

In Applicant's April 2011 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he was past due on his mortgage and delinquent on a number of other accounts. (Item 2) In his e-QIP, he indicated that he used his good credit to obtain credit cards which were used to obtain money to purchase real estate. (Item 2) The real estate was purchased in hopes of reselling it. However, after ten months and after \$100,000 had been charged on the cards, the individual who had promised to repay the amounts borrowed on the credit cards stopped paying and disappeared. Applicant asserts, but provided no documentation, that the creditors offered to settle the debt for \$40,000. (Item 3) Even if there was an offer, there is no documentation showing the offer was accepted or that payment has been made in accord with an agreement.

In October 2007, Applicant purchased real estate for \$120,750 with \$850 monthly payments. (Item 4) He asserts the mortgage was on rental property in a different state. He was unable to make his payments because his renters were not paying the rent. (Item 3) The mortgage was sold from the mortgage company listed in SOR 1.d to the mortgage company listed in SOR 1.a. (FORM Answer) In July 2010, he stopped making payments on the property when he was informed it was going to foreclosure. (Item 3) His April 2012 credit report indicates \$131,698 was owed on the real estate. (Item 5)

In his FORM Answer, Applicant asserts he would like to do a deed in lieu of foreclosure to address his delinquent mortgage payments. If that is not acceptable, he

wants to start paying the lender \$850 monthly, which was the monthly amount originally set forth in the mortgage. There is no documentation to indicate Applicant informed the lender of these proposals, that the lender accepted the proposed offers, or that payment was made in accord with any settlement reached.

In Applicant's e-QIP, he stated he was working with a debt settlement company to address the delinquent credit cards. However, in his May 2012 Personal Subject Interview (PSI) he stated he had received a letter that the company had gone out of business after he had made one payment to the company. The company never forwarded any money to Applicant's creditors. Applicant failed to document payment to any of the credit lenders.

Applicant's April 2012 credit report lists the past-due mortgage (SOR 1.d, \$131,698<sup>2</sup>) and the two charged-off accounts (SOR 1.b, \$10,404 and SOR 1.c, \$3,915). In his May 2012 PSI, he acknowledged all three accounts were correct and that they were his debts. (Item 3) However, by the time he answered the SOR and answered the FORM, he was asserting that he was the 2012 victim of identity theft and the debts were not his. (Item 1, FORM Answer) Applicant asserts these two delinquent accounts do not appear on his August 2015 credit report. (FORM Answer) However, he failed to provide a copy of that credit report.

In Applicant's FORM answer, he stated he sought counseling from a financial counselor, but failed to indicate what the counselor was doing for him or what he learned from the counseling. He stated in 2004, he sought guidance from two other financial companies. One was the debt settlement company earlier discussed to which he made a single payment. The other company he received counseling from may or may not, based on the company's initials, be the same financial company that Applicant asserts scammed him. (FORM Answer, Item 3) He provided no documentation as to what services these two companies provided him or what information he obtained from the counseling received.

Applicant's April 2012 credit report lists the delinquent mortgage and the two charged-off accounts, but also lists 40 accounts as being or as having been "Paid as Agreed."

## **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.

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<sup>2</sup> The mortgage obligation in SOR 1.a and 1.d are the same obligation. Therefore, SOR 1.a was found for Applicant.

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 has not made a payment on one of his mortgages since July 2010 and is more than \$44,000 past due on the account. He also has two delinquent charged-off accounts totaling more than \$14,000. 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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. In April 2012, he acknowledged owing the mortgage and the two charged-off accounts. Three years later, he now asserts the charged-off accounts are no longer his debts. He has been employed with his current employer since November 2011. He was unemployed for ten months, but that occurred eleven years ago. In May 2012, he was made aware of the Government's concerns about his delinquent debt. He has made no payments on his delinquent obligations. By failing to document the payment of delinquent debts he has failed to act responsibly under the circumstances.

In June 2015, Applicant received the SOR listing the Government's concern over his delinquent accounts. In August 2015, he received the FORM, again informing him of the Government's concern. All that he presented in mitigation was that he intended to offer a deed in lieu of foreclosure or start again making the original \$850 monthly payments on his overdue mortgage payments. He provided no documentation these offers were forwarded to the mortgage company or that the mortgage company agreed to either offer.

Applicant was given sufficient opportunity to address his financial delinquencies, Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment. He has not acted responsibly in addressing his debts. He provided no evidence he has received 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. The mitigating conditions listed in AG ¶ 20(c) do not apply. There is no showing of a good-faith effort to satisfy debts or a showing that payments have been made in accord with a repayment agreement. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on his mortgage or charged-off accounts.

The housing market caused real estate prices to decline. However, Applicant provided no information as to how and why he was unable to pay his mortgage other than his renters were untrustworthy. There is evidence the investment property was rented at one time, but there is little evidence showing factors beyond his control. AG ¶ 20(b) does not apply.

The mitigating condition listed in AG ¶ 20(e) does not apply even though Applicant disputed the two charge-off accounts. The mitigating condition requires not only that there be a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem, but Applicant must provide documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue. He failed to provide any documentation as to these two delinquent obligations.

## 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 his May 2012 interview, which was reinforced by the June 2015 SOR, and August 2015 FORM. There is no documentation of payment.

In requesting an administrative determination, 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 show he has had any recent communication with his creditors. By relying solely on the explanation in his response to the FORM, 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. 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 financial considerations security concerns.

### **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.c: Against Applicant

Subparagraphs 1.d: For Applicant<sup>3</sup>

### **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

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<sup>3</sup> The mortgage obligation listed in SOR 1.a and SOR 1.d are the same obligation. Since the SOR duplicates the debt, the debt listed in SOR 1.d was found for Applicant.