



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of: )  
)  
) ISCR Case No. 12-11647  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray Blank, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2014

**Decision**

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 has not resolved the charged-off, collection, or delinquent accounts alleged in the Statement of Reasons (SOR), which total more than \$45,000. The financial considerations security concerns remain. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on March 6, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's

<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.

security clearance. In an undated response, Applicant answered the SOR and requested a hearing. On February 6, 2014, I was assigned the case. On March 26, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on April 16, 2014. I admitted Government's Exhibits (Ex) 1 through 7 and Applicant's Exhibit A, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Timely submitted documents were admitted as Ex. B through Ex. K. On April 25, 2014, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied three delinquent accounts and admitted the 20 remaining factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is a 50-year-old field engineer who has worked for a defense contractor since March 2012, and seeks to obtain a security clearance. Applicant called no witnesses other than himself and produced no documents related to work performance or character references. In 1996, Applicant and his wife divorced for a year and then remarried.<sup>2</sup> (Tr. 14, 27) His wife and three children, ages 15, 21, and 23, live with him. His wife is a postal system supervisor with 19 years of service. (Tr. 27) Applicant's hourly wage is \$32. (Ex. 2, Tr. 24) His annual salary is approximately \$68,000 and his wife's annual salary is approximately \$64,000. (Tr. 49) He believes his net monthly remainder (monthly gross income less deductions, monthly expenses, and debt payments) is approximately \$1,800. (Tr. 50)

The SOR lists 21 charged-off, collection, or delinquent accounts, which total \$57,197. Applicant denies three delinquent accounts (SOR 1. i \$519, 1.j \$433, and 1.n \$3,085), which total \$4,037. Additionally, he asserted in his SOR response that the car debt in SOR 1.h (\$7,849) is the same debt as listed in SOR 1.k (\$8,561). The uncontested and non-duplicated delinquent accounts exceed \$45,000.

In 1999, Applicant purchased a home. He experienced serious problems with his mortgage lender. (Tr. 20, 21) After six month, the loan was sold to a new company, but Applicant was never informed of the sale and kept making his payment to the initial mortgage lender. (Tr. 30) The payments were never forwarded to the new mortgage creditor. Applicant had to file two lawsuits before the matter was corrected. He is current on his mortgage payments and utility bills. (Tr. 32) He has payments on a 2008 Toyota Tundra. (Ex. D, H) In 2013, he purchased a 2014 Chevrolet Camaro for \$31,000, with \$632 monthly payments. (Tr. 32, 49) His combined vehicle payments are \$1,100 monthly. (Tr. 32)

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<sup>2</sup> Applicant initially said he remarried after a year's separation and also stated the remarriage may have occurred in 2000. (Tr. 39)

Applicant did not timely file or pay his federal<sup>3</sup> income tax for tax years 1994, 1996, 1997, 2001, or 2003 (SOR 1.l). In March 2007, he was required to file his past due federal returns when he petitioned for bankruptcy protection. He owed \$19,773 (SOR 1.b) in delinquent tax. (Ex. 2) In his August 2011 Personal Subject Interviews (PSIs), he stated he had been paying \$700 monthly on the tax debt since February 2011. He never documented this assertion. At the hearing, he stated his wife is paying \$500 monthly on her tax debt, which is not his account. (Tr. 24, 38) As of May 2013, federal tax of \$22,380<sup>4</sup> is owed with a \$500 monthly payment due on May 28, 2013. (Ex. K) Applicant provided no evidence of payments made to the IRS.

Applicant did not file his 1994, 1996, and 1997 tax returns due to irresponsibility. (Tr. 37) He did not file his 2001, 2003, and 2007 returns because he was trying to keep his home. (Tr. 37) At the time, he was struggling to make his house payments. (Tr. 37) Three or four times in the past, the IRS has garnished his pay and taken money from his bank account. (Tr. 39) The IRS has intercepted all anticipated tax refunds. (Tr. 40)

In March 2007, Applicant filed for Chapter 13 bankruptcy protection (SOR 1.a). (Ex. 3) The filing included real property assets of \$96,902 and personal property assets of \$22,025 for a combined total of \$118,927 and total liabilities of \$120,507. (Ex. 3) At the time of filing, Applicant's monthly household income was \$5,546 and monthly expenditures were \$3,570. (Ex.3) On August 12, 2009, the bankruptcy was dismissed<sup>5</sup> because he failed to make the required monthly payments. He was \$6,846 delinquent at the time the bankruptcy was dismissed. Additionally, his check to the Trustee was returned due to insufficient funds. (Ex. 3) During the course of the bankruptcy, he paid \$28,037 on his mortgage and \$1,000 on his vehicle. The other creditors received nothing.

Applicant asserted his bankruptcy attorney (SOR 1.n, \$3,085) had been paid. The bankruptcy documents indicate \$10,850 in administration expenses for the bankruptcy had been paid. (Ex. 2) However, there is no indication these fees cover the bankruptcy attorney's fee. He also asserted some of the SOR debts were listed in his bankruptcy. These debts (SOR 1.o, \$195; SOR 1.q, \$274; SOR 1.r, \$1,029; and SOR 1.w, \$97) remain valid debts since the bankruptcy was dismissed and not discharged. (Tr. 46, 47, 48)

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<sup>3</sup> Applicant is a resident of a state that does not have a state income tax.

<sup>4</sup> At the hearing, Applicant stated he believed the balance owed the IRS was \$26,000. (Tr. 40)

<sup>5</sup> If a Chapter 13 plan is dismissed, creditors may immediately initiate or continue with state court litigation pursuant to applicable state law to foreclose on the petitioner's property or garnish their income. If a bankruptcy case is dismissed, the legal affect is that the bankruptcy is deemed void. If a Chapter 13 plan is completed successfully, the petitioner will earn a discharge. Discharge means that all debt listed in the Chapter 13 plan is satisfied; and therefore, creditors may not pursue additional collection actions pursuant to applicable state law.

In 2005, Applicant purchased a 2000 Ford Explorer for \$21,475, which was later repossessed. (Ex. 2, 3, Tr. 28) In July 2005, following the repossession of the vehicle, the creditor charged off \$7,849 (SOR 1.h). In August 2005, the charged-off amount increased to \$8,561. (Ex. 3) A \$9,511 debt was included in his Chapter 13 bankruptcy. (Ex. 3) The creditor received \$1,040 during the bankruptcy for this debt. (Ex. 3)

In April 2006, Applicant spent seven days in an intensive care unit for a strep infection. (Ex. 2) After leaving the hospital, he was required to remain at home for four months for additional monitoring. (Ex. 2) While hospitalized, he was laid off from work due to a reduction in force (RIF). He received \$4,000 in severance pay. (Ex. 2) In May 2006, he started his own business. (Tr. 2) He used funds from his 401(k) retirement plan until they were expended. (Tr. 23) In 2013, Applicant received a \$105,000 payment for work he had done in his sole proprietorship. (Ex. 2, Tr. 40, 50) He used approximately \$15,000 to pay bills and the balance went back into the business, and an amount was set aside to pay taxes. (Tr. 41) He has done no sole proprietorship work during the last year. (Tr. 51)

In 2007, Applicant's home suffered \$9,000 in hurricane damage to his roof, fence, and sheet rock. His insurance company paid only \$6,000 of the damage. (Ex. 2)

Applicant paid a \$480 charged-off utility bill (SOR 1.d). (Ex. A, Ex. F) A \$519 debt (SOR 1.i) is listed as paid in his August 2011 credit report. (Ex. 4, Tr. 35) In December 2001, he entered into an agreement to settle the debt listed in SOR 1.p (\$1,334) for \$300. (Ex. G) He provided documentation showing payment in accord with this agreement. (Ex. I)

In July 2013, Applicant made a \$1,146 payment to a law firm collecting on an educational loan (SOR 1.c, \$4,584). He documented no other payment on this debt and did not document that the payment was in response to an offer of settlement. He also documented a \$112 payment in January 2003 to the creditor listed in SOR 1.s (\$1,290) and 1.t (\$336). He did not establish this single payment was in response to a settlement offer by this creditor. He asserted, but failed to document, that the two student loans listed in SOR 1.u (\$1,788) and 1.v (\$1,138) were his wife's loans. (Tr. 54)

Applicant asserted that the vehicle debt showing in SOR 1.h (\$7,849), SOR 1.k (\$8,561), and SOR 1.m (\$3,724) were all the same debt. However, he provided no documentation showing all three debts are related to the same vehicle purchase or that the debt was paid. He stated he "had a couple of other vehicles repossessed, but that was well over ten years ago." (Tr. 42) He had no knowledge about the vehicle repossessed in SOR 1.m (\$3,724), which remains unpaid. (Tr. 43)

Applicant asserted, but failed to document, that the following debts had been paid: SOR 1.e (\$101), SOR 1.f (\$610), SOR 1.j (\$433), 1.q (\$274), (Tr. 35, 36) He did not assert the SOR 1.g (\$545) had been paid.

During the hearing, the SOR debts were reviewed and Applicant was informed which debts would need additional documentation to support his assertions that the debts were paid. (Tr. 52) He was informed additional documentation was needed for the debts listed in: SOR 1.b, 1.c, 1.d, 1.f, 1.g, 1.h, 1.j, 1.k, 1.m, 1.n, 1.o, 1.p, 1.q, 1.s, 1.t, 1.u, and 1.v. (Tr. 52-54) No evidence of current payment was received.

### **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. In 2007, Applicant filed for bankruptcy protection. He failed to timely file his federal income tax returns and to timely pay his tax for six years. Additionally, he owes in excess of \$22,000 in federal tax. He owns in excess of \$25,000 on other charged-off, collection, and delinquent accounts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same, 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 conditions fully mitigate Applicant's financial considerations security concerns. His financial difficulties are both recent and multiple. In 2006, eight years ago, he was hospitalized and suffered a RIF at work. Additionally, he was divorced from his wife for a period of time starting in 1996. He also experienced problems with his mortgage payments caused by the mortgage lender.

Applicant has received no credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. His evidence is insufficient to show he has made a good-faith effort to satisfy his debts. He asserts he has paid the majority of the SOR debts, but failed to document his claim. He was made aware of the Government's concern about his finances during his August 2011 PSIs, in the December 2012 written financial interrogatories, and by the March 2013 SOR. Even though his and his wife annual income is approximately \$132,000, Applicant only documented a single payment of \$1,146 payment on the \$4,584 debt, since receiving the SOR in March 2013.

At the hearing, Applicant was informed of the need to document the payment of the SOR debts. He provided documents to show that the three debts listed in SOR 1.d (\$481), 1.i (\$519), and 1.p (\$1,334) were paid. He documented the \$1,146 payment mentioned in the prior paragraph, and, in August 2005, made a \$548 payment on the \$8,561 debt. The debts in SOR 1.h and 1.k are duplications of the same debt.

Because Applicant has multiple delinquent debts and his financial problems are ongoing in nature, the mitigating condition listed in AG ¶ 20(a) does not apply. Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment. Likewise, he receives partial

application of the mitigating condition listed in AG ¶ 20(b), for in 2006, he was hospitalized, he and his wife were divorced for a period of time starting in 1996, and lost his job. There is little evidence of the effect these events eight years ago have on Applicant's current ability to address his delinquent debts. He has been employed in his current job since April 2011. He has had a sufficient opportunity to address his financial delinquencies. He has failed to act timely or responsibly under the circumstances and has failed to resolve his debts or significantly reduce his delinquent debts.

Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, it must still be considered whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.<sup>6</sup>

The mitigating condition listed in AG ¶ 20(c) does not apply because Applicant has not received financial counseling, nor is there an indication he has resolved his delinquent obligations. The mitigating condition listed in AG ¶ 20(d) applies to the three debts he paid. It does not apply to the other debts because, to date, Applicant's efforts to address his delinquent accounts have been minimal. There is no documentary evidence to support his assertions that he paid the majority of the SOR debts. There is no evidence to show he has had recent contact with his creditors or evidence he has tried to establish repayment plans. Applicant has failed to act aggressively, timely, or responsibly to resolve his delinquent debts.

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.

### **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.

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<sup>6</sup> ISCR 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)).



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. There is some evidence in favor of mitigating Applicant's conduct. In 2006, Applicant was hospitalized, lost his job due to a RIF, and, in 1996, divorced his wife. Also, two lawsuits were required to force the mortgage holder to properly handle his mortgage.

The disqualifying evidence under the whole-person concept is more substantial. While the RIF, divorce, and problems with his mortgage company were circumstances beyond his control, he has done little to address his long-standing delinquent accounts. The Applicant's annual gross household income is \$132,000 and the only documented payment he made after receiving the March 2013 SOR was the \$1,146 payment made in July 2013. There is no showing that a single payment satisfied the debt in SOR 1.c. His long-standing failure to repay his creditors or to arrange repayment plans reflects traits which raise concerns about his fitness to hold a security clearance.

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 is 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.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with questions and doubts about 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.

### **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

Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	For Applicant
Subparagraphs 1.j – 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q – 1.w:	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