



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00812
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

03/23/2015

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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. He had seven charged-off and six collection accounts totaling almost \$55,000. In 2014, judgments were entered against Applicant on four of the delinquent accounts. The delinquent accounts have not been resolved. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on April 9, 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.

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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.

On June 18, 2014, Applicant answered the SOR and elected to have the matter 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 October 24, 2014. The FORM contained seven attachments (Items). On December 8, 2014, Applicant responded to the FORM. Department Counsel did not object to the response, which was admitted into the record. On March 16, 2015, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied one debt (SOR 1.k, \$55) stating it was paid, denied owing federal income tax for tax years 2010 and 2011, and admitted the remaining charged-off or collection accounts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings and exhibits I make the following additional findings of fact:

Applicant is a 55-year-old systems engineer who has worked for a defense contractor since January 2007, and seeks to maintain a security clearance. Since February 2011, he has also worked part time as a security officer. He asserts he served honorably in the U.S. Navy from June 1978 through June 1999. The record is silent as to his grade at discharge. He receives \$1,417 monthly in military retirement pay and earns \$920 monthly from his part-time work as a security officer. (Item. 5) He produced no documentation as to his duty performance.

On July 3, 2012, Applicant completed a Personal Subject Interview (PSI) and was asked about his delinquent accounts. (Item 5) He indicated there was no specific reason for falling behind on his debt. He indicated his debts began to become delinquent a year and a half earlier. (Item 5) He had talked with a debt service about addressing his delinquent debts, but chose to attempt to address his debts by himself. Following the PSI, he made six \$200 payments to the IRS to address unpaid taxes.

In Applicant's December 2014 response to the FORM (FORM Answer), he indicated his financial difficulties were contributed to by: his mother-in-law needing special accommodations in her home; his brother's death without insurance to cover burial services; his wife having lost her job prior to January 2014 due to knee surgery, but that she was now reemployed; his paying of college tuition for two children; his vehicle repairs of \$3,000; and his drain pipe expenses costing another \$700.

Applicant asserted he had used a lump-sum retirement payout from the company where he worked from June 1999 until December 2006 to pay his creditors. He provided no documentation showing how much he had paid or which creditors had been paid. He also asserted,

I have been working diligently in recent weeks to resolve my outstanding debts and I can say that I have my financial situation under control. I have

paid several of my debts off, and have established payment arrangements with the remaining creditors. (FORM Answer)

Applicant provided no documentation showing what debts had been paid and what payment arrangements had been established. He provided no documentation to establish his financial situation was under control.

The SOR lists seven charged-off accounts and six collection accounts totaling \$54,700 in delinquent debt. During his January 2014 PSI, he was questioned about seven of the delinquent accounts appearing on his May 2012 credit report. (Item 5, 6) All 13 of the SOR debts appear on his May 2012 and/or October 2014 credit reports. (Items 6, 7) In January 2014, he responded to written financial interrogatories. (Item 5) At that time, he provided a Personal Financial Statement (PFS) showing net monthly income of \$7,341, net monthly expenses of \$2,039, and \$4,766 in monthly debt payments, half of which is his monthly mortgage payment (\$2,311). The written financial interrogatories asked about each of the SOR delinquent accounts. His monthly budget indicated he was making no payments on the delinquent debts.

The debt listed in SOR 1.a (\$8,104) was a charged-off account on which he was making no payments. The amount was the same as when he was questioned about the debt during his July 2012 PSI. He had made no payment on six SOR debts he had been questioned about in July 2012: SOR 1.e (\$4,737), SOR 1.h (\$2,607), SOR 1.i (\$2,606), SOR 1.j (\$18,729), SOR 1.l (\$4,272), and SOR 1.m (\$1,500). (Item 5)

In 2014, Applicant had four judgments entered against him on two charged-off accounts (SOR 1.b entered in April 2014 and SOR 1.g entered in March 2014) and on two collection accounts (SOR 1.i entered in May 2014 and SOR 1.j entered in August 2014). (Item 7) These four judgments, totaling in excess of \$26,000, remain unpaid. (Item 7)

Applicant paid the \$55 collection account (SOR 1.k) and the \$747 charged-off account (SOR 1.c) was marked "paid for less than the full balance" on his credit report. (Item 7) The IRS account transcripts show he owes no tax for tax years 2010 or 2011. (Item 3) He and his wife's adjusted gross income for 2010 was \$134,995 and for 2011, \$152,358. (Item 3)

Applicant is married and has three adult children. (Item 4) Prior to his January 2014 response to the written interrogatories, his wife had knee surgery that resulted in her losing her job of ten years. (Item 5) Her income made up 30 per cent of the household's income. As of December 2014, she was reemployed. (FORM Answer)

### **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 2014, four judgments totaling in excess of \$26,000 were entered against Applicant. He had charged-off accounts and collection accounts totaling more than \$50,000, which 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 does not fully meet any of the financial considerations mitigating factors. His financial difficulties are both recent and multiple. His financial problems started in 2011, and the majority of his debts remain unpaid. During 2010, the household's income was approximately \$135,000, and in 2011, it was more than \$152,000. He provided no documentation showing he received credit or financial counseling, that has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not acted responsibly in addressing his debts, nor shown evidence that he has made a good-faith effort to satisfy his debts.

Because Applicant has multiple delinquent debts and his financial problems are continuing in nature, he receives limited application of the mitigating conditions listed in AG ¶ 20(a). Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

Likewise, Applicant receives partial application of the mitigating conditions listed in AG ¶ 20(b). His wife lost her job of ten years following knee surgery. She was unemployed prior to January 2014 and was reemployed as of December 2014. Other than his assertion that her income represented 30 percent of the household's income, he provided no documentation as to how this substantially affected his finances or how long she was out of work. Since January 2007, he has been gainfully employed full time, and since February 2011, he also has had a part-time job.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, I must still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. 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).

The mitigating condition listed in AG ¶ 20(c) does not apply because there is no showing Applicant received "financial counseling." He asserted his financial situation is under control, but provided no documentation supporting that assertion.

The mitigating condition listed in AG ¶ 20(d) applies to the \$55 collection account (SOR 1.k) he paid, the collection account paid for less than the full balance (SOR 1.c), and to his unpaid taxes, which have now been paid. Applicant has not documented his efforts to address the other delinquent accounts. Nor is there is documentary evidence to support he contacted any of his creditors or has arranged repayment plans. He asserted he paid some debts and arranged repayment agreement for the remaining

debts, but there is no documentation that any repayment plan was reached. 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.

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.

Because Applicant chose to have this matter handled administratively, I am unable to fully evaluate his demeanor, appearance, or credibility. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for him in these matters, there is no evidence of payment on the majority of his delinquent SOR debts.

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, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide sufficient documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only scant paragraphs of explanation in his FORM Answer, financial considerations security concerns remain.

In Applicant's July 2012 PSI, the January 2014 written financial interrogatories, and in the April 2014 SOR, Applicant was made aware his delinquent accounts were of security concern. In the two and a half years since his July 2012 interview, he has documented he paid \$1,200 to the IRS, paid a \$55 collection account, and had a charged-off account paid for less than the full amount. The record fails to show how much was paid on this account. His long-standing failure to repay his creditors, at least

in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

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 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.

### **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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For 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