



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



In the matter of: )  
)  
) ISCR Case No. 14-02527  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

12/17/2014

**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. The six charged-off accounts listed in the Statement of Reasons (SOR), totaling more than \$47,000, have been or are being resolved. He did not falsify his security clearance questionnaire. The financial considerations and personal conduct security concerns have been favorably resolved. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on July 18, 2014, the DoD issued an SOR detailing security concerns, because DoD adjudicators could

<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.

not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On August 7, 2014, Applicant answered the SOR and requested a hearing. On September 26, 2014, I was assigned the case. On October 6, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on October 22, 2014. I admitted Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibits A through C, without objection. Applicant and his wife testified at the hearing.

The record was held open to allow Applicant to submit additional information. Additional material (Ex. D through F) was submitted and admitted into the record without objection. On November 3, 2014, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted the delinquent, charged-off accounts and denied intentionally falsifying his May 2012 Electronic Questionnaires for Investigations Processing (e-QIP). 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 47 years old and is currently working with an insurance company and seeks a security clearance. (Tr. 27) In April 2013, he was terminated from his job due to not having a clearance. He now works as a temporary employee making \$13 per hour. He has been able to find employment for only six of the last 18 months. Applicant called no witnesses other than himself and his wife, and produced no work or character references. Applicant takes full responsibility for his debts and is attempting to pay them. (Tr. 26) As of the hearing date, all the delinquent debts have been resolved except for a charged-off department store account (SOR 1.e, \$2,350) and a charged-off credit card account (SOR 1.a, \$7,197). (Tr. 34, 38)

In May 2009, Applicant honorably retired from the U.S. Navy as an E-6. (Ex.5) He had worked in information technology (IT) support. (Tr. 28) While in the Navy, he held a top secret clearance for approximately 15 years. (Ex. 5, Tr. 31) He is rated as 80% disabled by the U.S. Department of Veterans Affairs for which he receives \$1,600 monthly. (Tr. 40) He receives an additional \$1,600 in military retirement. (Ex. 3, Tr. 40)

Two years before retirement, Applicant purchased a home in the Midwest near his last duty location. (Ex. 3) In June 2011, Applicant moved by himself to the east coast to accept a DoD contractor position paying \$52,000 annually. The position paid less than what he made in the Navy. (Tr. 28, 32) He made the move when he was unable to find a job in his career field at his retirement location. (Tr. 26)

Applicant's daughter had two years remaining in high school and she stayed with Applicant's wife in the home. In June 2010, he moved from his east coast location to another mid-western state to accept a position as a senior service desk technician paying \$72,000. (Ex. 3, Tr. 28) The position lasted until June 2012. (Tr. 30) The cost of

maintaining two households had a detrimental impact on Applicant's finances. (Ex. 3, 5) In October 2012, he obtained a job paying \$57,000 annually, which ended in April 2013, because he did not have a clearance. (Ex. 3, Tr. 52) He is the sole support for his wife, daughter, and grandchild. (Tr. 33)

In September 2011, Applicant contacted a debt assistance company (DAC) to create and implement a debt re-payment program. (Ex. 3, SOR Answer) He currently sends the DAC \$350 monthly. (Tr. 36, 50) The monthly amounts he contributed varied due to variations in his income. At various times, he has paid between \$200 and \$1,900 monthly. (Tr. 36) However, even when unemployed, he continued to send funds to the DAC. (Tr. 19) The DAC receives a fee of 8% of the total amount of debt enrolled in the program. As of August 2014, the DAC had settled 10 of Applicant's 15 accounts. (Tr. 26) The settled debts and amounts paid are set forth in Ex. 3. As of August 2014, five of the six SOR debts were still in negotiations with the DAC. The \$3,935 department store account (SOR 1.d) was not in negotiations because the creditor had agreed to settle the debt for \$1,620, which was paid in June 2013. (Ex. 3, Tr. 37)

In October 2014, the credit lender in the jewelry store collection account (SOR 1.b, \$5,377<sup>2</sup>) agreed to settle the debt for \$2,688. (Ex. A, D) The credit lender in the credit card collection account (SOR 1.c, \$2,965) agreed to settle the debt for \$2,788. (Ex. B) The settlement amounts have been paid. (Tr. 3, 37) Payments were made from the DAC to the creditor. (Tr. 36)

Applicant was indebted to a bank on a \$27,990 charged-off account. When he contacted the holder of the note, he was told the bank (original creditor) had charged off the account in January 2012 and sold it to the current credit collection agency in February 2012. The collection agency stated its company is a passive debt buyer that does not initiate collection calls or generate demand letters, but places accounts for collection with its network of branch offices. (Ex. C) Applicant has not been contacted by any collection agency concerning this debt. In the October 3, 2014 letter, the current status was listed as closed – cancelled. (Ex. C)

In November 2014, the credit lender in the department store collection account (SOR 1.e, \$2,350) agreed to settle the debt for \$1,541. (Ex. E) The settlement agreement requires Applicant to make five monthly payments of \$308, starting on November 30, 2014. He owes approximately \$5,000 on a military department store account, which was not an SOR debt. (Tr. 39) The collection agency agreed to accept \$100 monthly on the \$5,000 debt. (Ex. F) When his payments to the DAC end, he will add the amount he had been paying to the DAC to what he pays on this credit card account. (Tr. 49)

In May 2012, in response to the e-QIP (Ex. 1) financial questions listed in Section 26, Applicant answered "no." In September 2011, when he started with the DAC, he turned over all his debts to them and they were paying the creditors. (Tr. 20, 43) When he completed his e-QIP, the DAC was actively contacting his creditors and was

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<sup>2</sup> The SOR incorrectly lists the amount of this debt as "\$5,3277." (SOR, Tr. 14)

negotiating with the creditors to address his delinquent accounts. When completing his e-QIP, he did not believe he had debts or accounts in collection, charged off, suspended, or cancelled. He asserts he never intentionally withheld information or falsified information on his e-QIP. (Ex. 5) At the hearing, the Government does not dispute Applicant's assertion that he did not intentionally falsify his e-QIP. (Tr. 59)

Applicant believes that if he had been employed full time, all of the debts with the DAC would have already been paid. (Tr. 27) He is current on the mortgage on his home where he was living when he retired from the Navy. (Tr. 41) He believes that home has a fair market value of \$170,000. (Ex. 3, Tr. 42, 47) He receives \$1,525 in monthly rent on the home. (Tr. 48) At his current location, he rents. He has paid off the loan on his 2006 vehicle. (Tr. 50) He has taken a personal financial management class and received consumer credit counseling. (Tr. 51)

### **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 had six charged-off accounts totaling approximately \$50,000. 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's financial problems started in 2009, after leaving the Navy. He was unable to find a job in his career field at his retirement location, where he also owned a home. He moved to the east coast, accepting a job paying less than what he received on active duty. His wife and daughter stayed behind in their home. The expense of maintaining two households had a detrimental impact on his finances. He has been employed only 6 of the last 18 months. He currently receives \$13 per hour. His previous job was terminated because he did not have a clearance.

A year before Applicant submitted his e-QIP, he sought the assistance of a DAC, which contacted his creditors and negotiated settlements to resolve 13 of 15 delinquent accounts. Two of the SOR debts have yet to be resolved. Since employing that company, he has made monthly payments of various amounts and made payments even when he was unemployed.

Applicant has acted in good-faith to resolve his delinquent accounts. Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has kept in contact with his creditors. "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could 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). Applicant acted reasonably under the circumstances by maintaining contact with his

creditors and hiring the DAC to negotiate settlements on his delinquent accounts. AG ¶ 20(b) applies.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by being unable to find a job where he retired and having to maintain two households. He paid the DAC even when unemployed, which shows a willingness and determination to address his delinquent accounts. Once the two remaining debts are addressed, it is unlikely he will again incur financial problems. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant was unable to find work after leaving the Navy, had limited employment during the last 18 months, and had the additional burden of maintaining two households. These are events beyond his control and he acted reasonably under the circumstances. AG ¶ 20(b) applies.

Under AG ¶ 20(c), Applicant attended a personal financial management class and received consumer credit counseling. It appears his financial problems are being resolved or are under control. Under ¶ 20(d), Applicant has resolved all but two of the SOR debts and the DAC is attempting to resolve those remaining debts. Applicant has been in the repayment program since 2011. Applicant's long involvement with the DAC is a good indication that he will continue with the program until all of his debts are resolved. AG ¶ 20(c) and ¶ 20(d) apply.

Applicant's handling of his finances does not raise a concern about his current reliability, trustworthiness, or good judgment.

### **Guideline E, Personal Conduct**

The security concern under this guideline is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15)

Applicant's answers to questions on his 2006 and 2012 security clearance applications, together with responses during corresponding subject interviews raise the question of whether the following disqualifying conditions under AG ¶ 16 apply:

(a) deliberate omission concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and,

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

When Applicant completed his 2012 e-QIP, he had turned his debts over to the DAC, which was actively negotiating with his creditors on his behalf and paying other creditors. Having turned all of his debts over to the DAC in 2011 and made monthly payments to the DAC thereafter, he did not believe any of his debts or accounts were in collection, had been charged off, suspended, or were more than 120 days delinquent. He asserts he never intentionally withheld information or falsified information on his e-QIP and the Government does not dispute this assertion.

Applicant's explanation for his e-QIP answers is reasonable and credible. While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. I find Applicant did not deliberately fail to provide correct and accurate answers on the security clearance application. The disqualifying conditions do not apply. I find for Applicant as to personal conduct.

### **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. In 2009, Applicant honorably retired from the Navy with an 80% disability rating. He was unable to find a job in his career field in his retirement location. He found a job in a different state, moving there alone. His wife and daughter stayed in their home so his daughter could complete high school. The position he obtained paid less than his Navy income and required maintaining two households.

In 2011, Applicant knew he had financial problems and sought assistance. Through the DAC he had resolved all but two of the SOR debts. His active participation in the DAC program gives confidence he will continue with the DAC until the last two debts are resolved. He asserts he would have already paid the delinquent accounts had it not been for periods of unemployment. But even while unemployed, he continued making payments to the DAC to allow the company to continue negotiating with and paying his creditors.

Having hired the DAC in 2011, Applicant did not falsify his 2012 e-QIP because the company was actively negotiating with his creditors and resolving his delinquent accounts. He believed his answers were correct. There was no falsification.

Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant maintained contact with his creditors and has been actively engaged in a repayment program since 2011. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations 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:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge