



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-03042
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: Richard Lee Griffin, Esquire

February 15, 2008

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant had five past due accounts totaling \$25,000. Four of the debts have been paid. Applicant has successfully mitigated financial considerations concerns. Clearance is granted.

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on July 23, 2007, detailing the security concerns under Guideline F for financial considerations based on a history of financial problems as evicenced by delinquent debts.

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 21, 2007, DOHA received Applicant answered the SOR, and requested a hearing before an administrative judge. On October 2, 2007, I was assigned the case. On November 13, 2007, DOHA issued a notice of hearing scheduling the hearing held on November 28, 2007. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through H, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On December 14, 2007, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. I. On December 6, 2007, the transcript (Tr.) was received.

### **Findings of Fact**

In his Answer to the SOR, dated June 25, 2007, Applicant denied the factual allegations in ¶¶ 1.b, 1.c, and 1.d of the SOR. He also provided additional information to support his request for eligibility for a security clearance. The material provided is incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old quality control inspector who has worked for a defense contractor since October 1979, and is seeking to maintain a security clearance. Coworkers and supervisors indicate Applicant is a tremendous asset at work. They state Applicant is trustworthy, vigilant, likable, and has integrity. (Ex. F)

In the second half of 2004, Applicant's sister was diagnosed with Non-Hodgkin's Lymphoma. (Tr. 37) From then until her death in the fall of 2005, Applicant was occupied by matters other than his finances. When he received a bill, he would set it aside and forget about it. (Tr. 40) Following her death, he began to catch up on his debts. However, his sister's death started his mother's decline with COPD (Chronic Obstructive Pulmonary Disease<sup>2</sup>). In April 2007, his mother entered the hospital with breathing problems and died in May 2007. (Tr. 38) The deaths had an impact on his repaying his debts. (Applicant's answer to the SOR) Applicant had been helping financially to support his mother. (Tr. 37)

A law firm collecting for a credit card company offered to settle the \$8,924 debt (SOR ¶ 1.e) for \$4,500. (Applicant's answer to the SOR) Payment was made and the account has been settled in full. (Tr. 34, Ex. E) Applicant paid the \$404.55 debt (SOR ¶ 1.b). (Ex. B, Applicant's answer to the SOR) Applicant paid the \$9,158 debt listed in SOR ¶ 1.c. (Applicant's answer to the SOR) The creditor provided a letter stating the account has been settled in full. (Ex. C) A credit collection service collecting for a credit card company offered to settle the \$3,307 debt (SOR ¶ 1.d) for \$1,653. (Applicant's answer to the SOR) Applicant accepted the offer and paid the debt. (Tr. 34, Ex. D)

Applicant obtained a credit card account in the late 1980's and still has an account with this company. The card was lost in the mail when it was renewed.

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<sup>2</sup> A chronic obstructive airways disease.

Applicant obtained a new card and had the previous balance transferred to the new card. Applicant believes the account was paid in full as of December 2006. (Tr. 32, Ex. A) Applicant has not received any response to his inquiry to the creditor concerning the validity of the debt. (SOR ¶ 1. a) (Ex. I) The debt was written off in November 2001, which is beyond the state statute of limitations.<sup>3</sup>

Applicant was in the Air Force from 1975 through 1979 obtaining the grade of E4. He has been a volunteer blood donor since 1984. His annual salary is between \$52,000 and \$55,000. (Tr. 63) Following the hearing, Applicant arranged to attend credit counseling with Consumer Credit Counseling Service (CCCS). Applicant has a debit card and a department store card with a \$300 limit. (Tr. 39, Ex. I) He purchased his home in 1996 and is current on his mortgage payments. (Tr. 35) He owes approximately \$40,000 on the house the county assesses at \$121,000. (Tr. 45) He has \$7,000 to \$8,000 in a retirement account. (Tr. 45) His vehicle has been paid for. (Tr. 49)

Since his mother's death, Applicant has a new prioritized system of paying his bills. He is paying his bills on time. (Tr. 66)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

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<sup>3</sup> See Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont'l Casualty Co. v. Dr. Pepper Bottling Co. of Tex.*, 416 F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5<sup>th</sup> Cir. 2004) (discussing statute of limitations for open or revolving accounts). Debts barred by the Texas statute of limitations are legally uncollectible. However, Applicant's payments on his debts have reinstated them, ending the statute of limitations defense to collection. See *Stine v. Stewart*, 80 S.W.3d 586, 591, 45 Tex. Sup.J. 966 (Tex. 2002).

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). The reduction in the magnitude and number of debts that creditors can legally enforce because of the application of the Texas statute of limitations reduces the potential vulnerability to improper financial inducements, and the degree that a debtor is "financially overextended," is also reduced. However, it does not negate the debtor's past conduct, which failed to take more aggressive actions to resolve the financial jeopardy.

potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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**

Under Guideline F (financial considerations) a security concern typically exists due to significant unpaid debts. 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.<sup>4</sup>

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. 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 under agreed upon terms. Absent evidence of strong 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 the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owed approximately \$25,000 on five past due obligations. Disqualifying Conditions AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations," apply.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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. Applicant's financial problems were contributed to by his sister's and mother's illnesses and death, which are events that will not recur. Additionally, part of his income no longer goes for this mother's support. AG ¶ 20(a) applies.

Evidence that "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" under AG ¶ 20(c), has some applicability. It was not until after the hearing Applicant sought financial counseling advice through CCCS. But the problem is under control. Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant settled and paid four of the five debts.

Applicant has inquired of the creditor holding the remaining debt (\$1,986) as to the validity of the debt and received no answer. He believes the debt has been paid. It was written off in 2001 and is no longer enforceable through the courts due to the statute of limitation. The debt has not been reduced to a judgment, greatly diminishing its enforce ability and its weight as a potential basis for coercion, pressure, or duress. The size of the debt is such that it does not raise security concerns.

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<sup>4</sup> Revised adjudicative guidelines (AG) ¶ 18.

Applicant is current on his mortgage, does not have a car payment, has a single low-limit credit card, and no longer helps support his mother. It appears Applicant is in a position to pay this debt, if required. This debt does not raise concerns about his current reliability, trustworthiness, or good judgment.

### **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 the 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) 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.

Applicant has only one outstanding, which cannot be a source of improper pressure or duress. 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).)

I have also considered the record evidence as a whole in light of the whole-person concept. Applicant is 50 years old, has worked for the same company for 28 years, and is sufficiently mature to make thoughtful, prudent decisions about his financial situation. Facing the not uncommon financial and emotional strains of his sister's and mother's illnesses and deaths, Applicant let some of his financial obligations slide into delinquency. Plainly, he was irresponsible and exercised poor judgment in doing so. Nevertheless, he has presented sufficient evidence to justify a favorable decision for several reasons.

First, he initiated action and resolved four of the five debts in the SOR. Second, he has contacted the remaining creditor and received no response. The remaining debt is no longer enforceable. And third, the record evidence shows a measurable improvement to his financial situation.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. He has shown that he is serious about resolving his past financial problems. Although he has not presented a perfect case in mitigation by paying off all debts in the SOR, he has presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. Likewise, he has met his ultimate burden of persuasion to obtain a favorable

clearance decision. For all these reasons, I conclude Applicant 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, Guideline F:           FOR APPLICANT

Subparagraph 1.a-1.e:       For Applicant

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge