



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



In the matter of:)	
)	
)	ISCR Case No. 07-18778
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Department Counsel
For Applicant: *Pro Se*

January 30, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 14 unpaid debts totaling approximately \$14,000, which are in collection or have been charged off. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on April 16, 2008, detailing security concerns under financial considerations.

¹ 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 April 16, 2008, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated November 5, 2008. The FORM contained 10 attachments. On November 18, 2008, 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.

Applicant's response to the FORM was due 30 days after receipt of the FORM. Applicant's response was due on December 18, 2008. As of January 15, 2009, no response had been received. On January 16, 2009, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶ 1.d and ¶ 1.o of the SOR. He also denied SOR ¶ 1. He admitted the remaining factual allegations.

Applicant is a 42-year-old purchasing agent who has worked for a defense contractor since August 2005, and is seeking to obtain a security clearance.

In 1999, Applicant was involved in a car accident and was on disability for six months. In June 2005, Applicant suffered a stroke and a brain aneurism and was out of work from June 2005 through September 2005. From October 2005 through December 2005, he worked part-time until January 2006 when he returned to full-time employment. His part-time employment and large medical bills added to his financial problems. (Item 6, p 5) In July 2005, Applicant's automobile was repossessed. Following resale of the vehicle, he yet owed \$3,770 on the vehicle.

In February 2008, Applicant stated he was working with a financial adviser to address his debts. (Item 6, p 2) At that time, he intended to start making monthly payments on his debts. He attached a repayment schedule indicating he would pay \$150 each month on a \$1,415 debt (SOR ¶ 1.l) owed a towing company. Applicant submitted a proposed repayment plan with his answers to the written interrogatory. (Item 6, p 9) No evidence documenting payment of the listed debts was provided.

As of August 2007, Applicant's monthly gross income was \$3,826 and his net income was approximately \$3,000. Applicant's spouse's gross monthly income was \$3,000 and her net income was \$2,121. After paying monthly expenses, their combined monthly disposable income was \$2,461. (Item 6, p 7) As of February 2008, their combined monthly disposable income was \$1,269 (Item 6, p 8)

The SOR alleges 15 debts, which total \$14,421. Applicant denies two debts (SOR ¶ 1.d and SOR ¶ 1.o), which total approximately \$5,000. He admits the remaining 13 debts. Six of the debts were for small amounts under \$300 each: a \$37 medical debt (SOR ¶ 1.a), a \$28 medical debt (SOR ¶ 1.b), a \$100 medical debt (SOR ¶ 1.k), \$142 (SOR ¶ 1.e), a \$158 telephone bill (SOR ¶ 1.g), and a \$252 telephone bill (SOR ¶ 1.m). The other seven debts were: a \$372 medical bill (SOR ¶ 1.c), \$1,875 collection account

(SOR ¶ 1.f), \$3,770 collection account (SOR ¶ 1.h), \$323 collection account (SOR ¶ 1.i), a \$551 medical debt (SOR ¶ 1.j), a \$1,415 debt owed an automobile towing company (SOR ¶ 1.l), and a \$476 gas utility bill (SOR ¶ 1.n).

Applicant denied the \$318 debt. (SOR ¶ 1.d), which was a cell phone account closed in 2004. Applicant asserted he thought he had a zero balance when he closed the account. (Item 6, p 5) As of March 2008, Applicant owed \$317 on this debt. (Item 7) Applicant paid two accounts, the cell phone debt and a \$10 co-payment on a dental bill. Applicant's November 2008 credit bureau report, lists the cell phone debt as paid. (Item 10)

Applicant denied the \$4,604 debt. (SOR ¶ 1.o) Applicant offered no further explanation or information as to the nature of this debt. The debt appears on Applicant's February 2008 credit bureau report, (Item 6, p 17) but does not appear on his November 2008 credit bureau report. (Item 10)

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 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

Revised Adjudicative (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 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 holding 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 has 14 past due unpaid debts totaling approximately \$14,000, which are in collection or have been charged off. Six of Applicant's debts were under \$300 each. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations.”

Applicant's history of delinquent debt is documented in his credit report, his interview by an Office of Personnel Management (OPM) investigator, his SOR response, and his response to interrogatories. Applicant has admitted responsibility for all but two of his delinquent debts. He has provided insufficient documentation to show significant progress resolving any of his debts other than the \$318 debt (SOR ¶ 1.d). There is no documentation that even the six smallest debts which together total approximately \$700 have been paid.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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;

(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 meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and did not occur under circumstances not likely to recur. He failed to demonstrate that his debts were largely due to circumstances beyond his control, or that he has acted responsibly in addressing his debts. Further, he has not sought credit counseling, or otherwise brought the problem under control as his circumstances permitted.

AG ¶ 20(a) does not apply. There are 14 unpaid debts. Some of the debts are medical debts, others are for utility bills, and one is owed to an automobile towing company, which are not unusual debts and are the type of debts likely to recur in the future. The debts cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) has limited applicability. Applicant's financial problems were contributed to by his 1999 auto accident for which he was on disability for six months and a 2005 stroke, which resulted in him being out of work for four months and three months part-time working ending in January 2006. Other than the medical bills, Applicant has provided no evidence as to how these events impacted on finances. The five unpaid medical debts total approximately \$1,100. There is no documentation that even the two smallest of these medical debts (\$28 and \$37) have been paid.

There is no showing Applicant has received financial counseling or that his debts are being resolved or are under control. Only one debt has been paid. There is no repayment plan. AG ¶ 20(c) and ¶ 20(d) do not apply.

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) 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. Although the debts are not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. The money was not spent frivolously, nor incurred on luxuries; however, the debts remain unpaid.

Based on the totality of the evidence available in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. He has not taken effective action to resolve his debts, and has not equipped himself to avoid financial problems in the future.

Overall, the record evidence leaves me with questions or doubts 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

Subparagraph 1.a - c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e - o:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge

Name	ROSS, Tony Fernanda	Case No.	07-18778
Social Security Number	045-76-4736	Age	42 July 16, 1966
Letter of Intent / SOR	April 16, 2008	Employer	Coleman Aerospace
Answer Date	May 12, 2008	Occupation	pruchasing agent
Final Denial Date		Since When	August 2005
Appeal Date		Clearance	None Secret Top Secret
Date Assigned	April 16, 2008	Guideline	financial considerations
DC	Richard A. Stevens	Guideline	
Applicant's Counsel		Guideline	
Notice of Hearing Date		Guideline	
Hearing Date		Guideline	
location	FORM		
Transcript Date	FORM	Mitigated Guidelines	
SF 86 Date	July 6, 2007		
Due Date			