



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



In the matter of: )  
)  
) ISCR Case No. 08-01668  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 20, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant has three unresolved past due obligations totaling in excess of \$36,000. 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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on November 19, 2008, detailing security concerns under financial considerations.

<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 December 5, 2008, Applicant answered the SOR, and requested a hearing. On February 12, 2009, I was assigned the case. On February 19, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on March 18, 2009.

The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through F, which were admitted into evidence. The record was held open to allow additional information from Applicant. On March 25, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. G. On March 31, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations in SOR ¶¶ 1.d, 1.f, 1.g. and 1.i. He admitted the remaining factual allegations. He provided an additional document to support his request for eligibility for a security clearance.

Applicant is a 53-year-old senior price analyst who has worked for a defense contractor since October 2006, and is seeking to obtain a security clearance. Applicant's co-workers, colleagues, supervisors, acquaintances, and friends state: Applicant is a man of genuine character and integrity, trustworthy, honest, talented, energetic, hardworking, enthusiastic, dedicated, a determined and courteous professional, with a strong moral character and strong work ethic. (Ex. A)

Applicant asserts he had no financial problems until January 2000 when he moved from California to a new state. He had been given the option by his employer of being laid off or moving to a company location in the new state. When he moved, he intended the move would be temporary until he could find another job and relocate back to California. His alternate plan was to have his family relocate to his new location. Applicant's daughter had a congenital heart condition. (Tr. 30) The first day at his new location his daughter was hospitalized and he had to rush back to California. Applicant was unable to find a job in California and his wife refused to relocate to his new location.

Applicant exhausted his 401(k) retirement plan funds attempting to maintain homes in both locations. (Ex. 3) Use of his retirement funds resulted in tax liability. Additionally, the relocation money received from his company for his move was also taxable. (Tr. 31) A tax liability for tax years 2000 and 2001 was incurred. (Tr. 31) A tax lien was placed on his property. Starting in 2003, Applicant made offers in compromise to the IRS. (Ex. 3) Applicant was unsuccessful in his attempt to negotiate a settlement with the IRS. The IRS demanded \$5,000 and \$500 per month, which Applicant was unable to pay.

In June 2008, the IRS intercepted Applicant's \$900 tax refund and applied it to his tax debt leaving a balance of \$29,891 in past due taxes for tax year 2001. (Answer to SOR, Ex. 3) Applicant is not currently making payment to the IRS. (Tr. 44) The SOR alleges three tax liens which total \$61,580. In March 2009, Applicant submitted an IRS

Form 911, Request for Taxpayer Advocate Service Assistance. No settlement has been reached with the IRS.

In November 2002, Applicant's separation from his family ended in a divorce. (Ex. 3) He was required to pay \$1,408 monthly child support for his three children. (Ex. C) Applicant got behind on his child support obligation (SOR ¶ 1.e, \$11,770). In December 2008, Applicant's credit bureau report (CBR) indicates Applicant was 60 days delinquent. (Ex. B) At that time, Applicant child/family support obligation was \$12,004. Applicant's February 12, 2009 pay statement indicated Applicant was paying monthly child support of \$1,385 with an additional \$250 monthly for the child support arrearage. (Ex. D, Tr. 40)

In December 2001, Applicant opened a credit account (SOR ¶ 1.i, \$1,167). The debt remained unpaid. In 2002, Applicant remarried. From April 2006 to October 2006, Applicant was laid off from work. In October 2006, he obtained his current job.

Following the hearing, Applicant paid the \$156 medical debt listed in SOR ¶ 1.a. (Ex. G, a) He made a \$100 payment on the \$250 medical debt listed in SOR ¶ 1.b. (Ex. G, b) He paid the cable bill listed in SOR ¶ 1.c. (Ex. G, c)

Applicant had a credit card account with a credit union. He made payments on the account until 2000, when he stopped making payments. (Ex. 3) As of December 2003, Applicant owed \$3,589 (SOR ¶ 1.f). (Ex. G, f-2) By December 2007, the debt had increased to \$4,965. (Ex. G, f-3) The credit union debts listed in SOR ¶ 1.f and SOR ¶ 1.g are the same debt, which remains unpaid. The one account was closed out and the second opened. (Tr. 41)

In April 2003, a \$2,866 debt (SOR ¶ 1.h) was sold or transferred. In April 2006, an account with a collection agency was opened with a \$2,886 (SOR ¶ 1.d) balance. (Ex. 5) Applicant's CBR states, "Consumer disputes this account information." (Answer to SOR, Ex. 4, Ex. D)

In June 2007, Applicant provided a comprehensive analysis of his current financial situation. (Ex. 3) His monthly gross salary was \$7,485 and his monthly disposable income was \$1,855. Applicant is receiving counseling to develop a financial plan to address his debts. (Ex. G) In 2008, Applicant purchased a 1995 vehicle for \$1,000. (Tr. 34, Ex. F) He makes \$277 monthly payments on a 2001 vehicle. (Tr. 53)

A summary of the 12 SOR debts follows:

	Creditor	Amount	Current Status
a	Medical account.	\$156	Paid. (Ex. G)
b	Medical account.	\$250	One payment of \$100 made and two more payments are to be made. (Ex. G)
c	Cable bill.	\$201	Paid. (Ex. G)

d	Credit card account.	\$2,886	Applicant's disputes this account information on his CBR. (Ex. D, Ex.4)
e	Child/Family support obligation.	\$11,770	Paying. As of Jan 2009 he owed \$12,004. (Ex. B) He is paying his monthly child support obligation plus an additional \$250 monthly payment on the arrearage. (Ex. C)
f	Credit union debt.	\$3,401	Account charged off and reopened as item g. (Ex. D)
g	Credit union debt.	\$5,131	Unpaid.
h	Collection account.	\$2,866	Applicant asserts this debt is the same debt as d.
i	Store account.	\$1,167	Unpaid. Applicant is attempting to reach settlement on this debt. (Tr. 51)
j	Federal Tax Lien August 2005. (Ex 6)	\$6,864	Unpaid. As of June 2008, tax owed was \$29,891.
k	Federal Tax Lien August 2005. (Ex. 5)	\$22,487	Unpaid.
l	Federal Tax Lien May 2005. (Ex. 5)	\$32,229	Unpaid.
	Total debt listed in SOR	\$89,408	

### **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's history of delinquent debt is documented in his credit reports, his interview with an Office of Personnel Management (OPM) investigator, his SOR response, and his testimony. Applicant owed more than \$58,000 on past due obligations. He has provided insufficient documentation to show significant progress resolving his debts. 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(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; 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.

The SOR alleges 11 past due obligations totaling in excess of \$89,000. Applicant has paid two debts (SOR ¶ 1.a, \$156 and SOR ¶ 1.c, \$201) totaling less than \$400. He is making payment on two additional debts. He made a \$100 payment and has yet to make two additional payments totaling \$150 on one debt (SOR ¶ 1.b, \$250). Applicant's \$12,000 child support arrearage (SOR ¶ 1.e) is being repaid at a rate of \$250 monthly. Two debts listed in the SOR are duplicates. The \$3,401 (SOR ¶ 1.f) is the same as the

\$5,131 (SOR ¶ 1.g) debt. The \$2,886 debt (SOR ¶ 1. d), a debt Applicant disputes, is the same debt as the \$2,866 debt (SOR ¶ 1.h). The \$5,131 debt (SOR ¶ 1.g) and the \$1,167 (SOR ¶ 1.i) remain unpaid.

Applicant owes approximately \$30,000 in past due taxes, which represent three of the SOR debts (SOR ¶ 1.j, \$6,864; SOR ¶ 1.k, \$22,487; SOR ¶ 1.l, \$32,229). Applicant's past due taxes remains unpaid.

Under AG ¶ 20(a), Applicant's financial problems were contributed to when he had to change work locations. He attempted to maintain two households. In 2002, Applicant divorced and remarried. His use of his retirement funds and relocation pay resulted in a tax lien of approximately \$30,000. Applicant has unsuccessfully attempted to reach a settlement with the IRS. The behavior did not happen long ago, but his relocation is an event unlikely to recur. However, his taxes remain unpaid thereby casting doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) has limited applicability.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. From April 2006 to October 2006, Applicant was laid off from work. AG ¶ 20(b) has limited applicability because he has no plan to pay the tax liability.

Under AG ¶ 20(d), Applicant has paid two of the debts and is making payment on two other debts. Applicant has made a good-faith effort to repay his overdue obligations as to these four obligations. Under AG ¶ 20(c), he has received financial counseling; however three debts totaling approximately \$36,000 remain unpaid. There is no repayment plan for those debts. AG ¶ 20(c) does not apply. These three unpaid debts 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) 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. Applicant indicated his move from one state to another dictated by his work resulted in a divorce and large tax debt. In July 2007, Applicant became aware of the government concern about his finances and he answered interrogatories in July 2008. (Ex. 2, 3, 4) He has done little to resolve or manage his delinquent debts since learning of the government's concern. He has paid approximately \$500 of the debt and is repaying his child support arrearage at a rate of \$250 monthly.

According to Applicant's 2007 budget, he had money, approximately \$1,800 discretionary income each month, which he could have used to resolve old debts. More than \$36,000 of debt remains unresolved. Applicant has no plan for properly addressing this debt.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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:	AGAINSTAPPLICANT
Subparagraph 1.a through 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i through 1.k:	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.

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CLAUDE R. HEINY II  
Administrative Judge