



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



In the matter of: )  
)  
) ISCR Case No. 08-02081  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Department Counsel  
For Applicant: *Pro Se*

December 11, 2008

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant owes approximately \$95,000 on 15 past due accounts including a tax lien of approximately \$34,000. None of the debts have been paid. Applicant has not rebutted or mitigated 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

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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.

Statement of Reasons (SOR) on July 16, 2008, detailing security concerns under financial considerations.

On August 8, 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 September 16, 2008. The FORM contained 24 attachments. On September 25, 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 was due on October 25, 2008, 30 days after his receipt of the FORM. As of December 5, 2008, no response had been received. On November 19, 2008, I was assigned the case.

### **Findings of Fact**

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

Applicant is a 48-year-old mechanic who has worked for a defense contractor since January 2007, and is seeking to obtain a security clearance. From June 2005 through October 2005 and from January 2006 until May 2006, Applicant was unemployed.

In February 1999, Applicant divorced for the second time. In 2001, Applicant took \$30,000 from his 401(k) retirement plan to pay his ex-wife per his divorce decree. The withdrawal from his retirement plan resulted in a \$33,888 tax liability and lien being filed in July 2005. (Items 8, 9, and 18) Applicant's tax refunds for tax year 2005 and 2006, totaling approximately \$2,400, were intercepted by the IRS and applied to his tax liability.

Applicant lived in an apartment from July 2003 through February 2006. He lost his job the end of 2005 and continued to live in the apartment without paying rent. When he left, he owed \$1,602 in past due rent. In August 2006, a \$1,914 judgment was entered against Applicant in favor of the owners of the apartment. (SOR ¶ 1.b, Items 10, 12, 13, 14, 15, 16, 17) Applicant denies this judgment asserting he made a lump-sum settlement on this judgment in September 2006. He provided no documents supporting this assertion.

During a December 2007 interview (Item 24), Applicant discussed his finances. He admitted a number of the debts and stated he did not recognize six debts. At that time, he stated he was attempting to re-establish his credit and was not aware of any new delinquent accounts. He stated he would contact the delinquent accounts holders the following month to establish a repayment plan. No evidence of any payment or repayment plan is found in the record.

The debts Applicant admitted he owed were: SOR ¶ 1d (\$793<sup>2</sup>) on which he claimed he had been making payments since March 2006 and stated the debt should be settled by December 2008; SOR ¶ 1m (\$572) for a computer; SOR ¶ 1o (\$363) for automobile insurance; and, SOR ¶ 1p (\$85), a water bill. (Item 24) Applicant asserted, but provided no documentation, that he made an \$85 lump sum payment in February 2006 to settle this debt with the water company. During the December 2007 interview, Applicant was unaware and could provide no information about the following debts: SOR ¶ 1c (\$4,489); SOR ¶ 1e (\$731), a telephone bill; SOR ¶ 1f (\$1,561); SOR ¶ 1h (\$99); SOR ¶ 1i (\$95), a telephone bill; and SOR ¶ 1l (\$182). (Item 24) In his answer to the interrogatories (Item 4) and in his SOR answer, Applicant admitted owing each of these debts. The debts listed in SOR ¶ 1c (\$489) and SOR ¶ 1d (\$793) are the same debt.

In December 2002, a mortgage corporation filed suit against Applicant. (Item 23) Applicant's June 2008 credit report (Item 5) lists a \$44,217 debt (SOR ¶ 1k) as a charged off real estate mortgage account. Applicant denied this debt.

Three additional judgments are contained in the record, but are not debts listed in the SOR. In February 2008, a \$304 judgment was entered against Applicant in favor of a condo association. (Item 11) In December 2004, a \$9,064 judgment was entered against Applicant in favor of an investment group. (Item 19) In October 1003, a \$7,635 judgment was entered against Applicant in favor of a bank. (Item 20)

## **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

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<sup>2</sup> Applicant's June 2008 credit report (Item 5, page 2) list the balance owed at \$5,541.

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**

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.

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.

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.

The record evidence supports the conclusion that Applicant has a history of financial problems. Applicant admits owing approximately \$49,588 on 13 past due obligations, including one tax lien. He owes \$46,131 on an additional judgment and a charged off mortgage, which he did not admit. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Applicant's history of delinquent debt is documented in his credit reports, his interview by an Office of Personnel Management (OPM) investigator, his SOR response, and his response to interrogatories. Throughout this process, he admitted responsibility for a number of his debts including the \$33,888 tax lien. He denied owing only two of the SOR debts. All of the SOR debts are currently delinquent. In December 2007, he stated he would contact his delinquent creditors the following month and set up repayment plans with them. He provided no documentation to show he did so or that he has made any progress resolving these debts.

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.

Applicant presented no evidence of good-faith efforts to resolve his 15 debts or that he participated in financial counseling. His financial problems are recent, are likely

to recur and cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant's periods of unemployment and February 1999 divorce are events beyond Applicant's control which would have contributed to his financial problems. AG ¶ 20(b) has some applicability. However, the divorce took place nine years ago, which would diminish the impact of that event on his current debts. How Applicant's periods of unemployment affected his financial problems is not part of the record. Applicant has been employed since June 2006, and five of the SOR debts are each less than \$200. Even these smaller debts have not been paid. He presented no evidence of financial responsibility.

Under AG ¶ 20(c), there is no showing Applicant has attended financial classes, maintains a budget, or is paying his debts. AG ¶ 20(c) does not apply. He asserts he is attempting to rebuild his credit and has no additional "new" delinquent accounts.

Under AG ¶ 20(d), Applicant asserted he settled two debts (SOR ¶ 1.b and ¶ 1.p) and was making payments on another (SOR ¶ 1.d), but failed to document any settlement or payment. There is no evidence of good-faith efforts to repay the debts. AG ¶ 20(d) does not apply.

Even if there was sufficient documentation showing the two debts he denied were no longer owing, the remaining unpaid obligations are sufficient to support an unfavorable finding.

### **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. Applicant admits all but two of the debts. In December 2007, he promised to contact his creditors to establish a repayment plan. There is no evidence he has done so, or that he has paid any of the debts. Applicant is 48 years old and sufficiently mature to properly handle his financial obligations, but has not done so.

There is no record evidence as to Applicant's gross income, monthly expenses, or net remainder (discretionary income). There is no evidence he is in a position to repay these debts or that he is now living within his means. There is no evidence of rehabilitation, permanent change of behavior, or the likelihood the debts will not continue. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For 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 – 1.c and 1.e- 1.p:	Against Applicant
Subparagraph 1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge