



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-08171
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 13, 2009

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant has 12 unpaid accounts placed for collection, totaling in excess of \$38,000. Applicant has not mitigated the financial considerations security concerns. 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. On November 14, 2008, acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, based on a history of financial problems as evidenced by 15 accounts that had been placed for collection.

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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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 18, 2009, Applicant answered the SOR, and requested a hearing. On March 10, 2009, I was assigned the case. On March 26, 2009, DOHA issued a notice of hearing scheduling the hearing held on April 22, 2009. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through C, which were admitted into evidence.

The record was kept open to allow Applicant to submit additional documents. On April 24, 2009 and May 1, 2009, additional documents were received. There being no objection, the material was admitted into evidence as Ex. D and Ex. E. On April 30, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the debts listed in SOR ¶¶ 1.i, 1.j, 1.l and 1.n. He admitted the remaining debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 51-year-old senior operational test evaluator who has worked for a defense contractor since November 2007, and is seeking to maintain a security clearance. His acquaintances state Applicant is efficient, competent, honest, dedicated, has great integrity, and demonstrates empathy and compassion. (Ex. D, E)

From March 1981 through December 1992, Applicant served on active duty in the U.S. Marine Corps. From January 1993 through November 2002 and March 2004 through January 2005, Applicant served in the Army National Guard. From January 2005 through November 2006, he served on active duty with the Army National Guard in Afghanistan. While in the service, he held a secret security clearance.

Applicant stated he started attending higher education in 1990. (Tr. 33) In 1998, he achieved his Bachelor of Arts degree in religion and in May 2002, he received a master's degree in religion. (Tr. 33) Applicant obtained student loans to pay for his education. Student loans are listed in SOR ¶ 1.i (\$52,360) and SOR ¶ 1.j (\$26,337). In his response to the SOR, Applicant denied these two debts. Applicant's May 2008 CBR and September 2008 CBR reflect numerous student loans obtained between July 1997 and September 2003. (Ex. 2, 3) His student loans were to be deferred while he was on active duty.

Applicant also has private student loans which are currently in deferral until February 2010. (Ex. C, Tr. 33) Applicant's May 2008 CBR lists the amount in excess of \$20,000. (Ex. 3) Applicant's September 2008 CBR lists the amount in excess of \$101,000. (Ex. 2) Applicant currently pays \$438 monthly on his student loans. As of November 2008, Applicant owed the Department of Education approximately \$98,000. (Ex. C)

Applicant was married from 1981 until 1990, and from December 1998 until May 2002. (Tr. 36, Ex. 1) The day following his May 2002 graduation, his divorce became

final. (Tr. 25, 27) From the end of May 2002 through January 2003, Applicant was homeless. (Tr. 25) The little money he was getting from his military reserve pay went to paying his child support. (Tr. 26) Applicant provided no information as to his unemployment or as to why he was homeless.

In 2003, he moved from California to live with his daughter in Texas. (Tr. 27) He found employment as a substitute teacher and part-time as a security guard. (Tr. 28) When his rent increased from \$650 to \$1,000 per month, he left the apartment. (Tr. 32, 39) He does not know why the amount he yet owes is so large. (Tr. 40) He was not behind on his rent when he notified the apartment complex he was leaving. After he left, the creditor placed an \$8,975 (SOR ¶ 1.c) account for collection. Eight months remained on his one-year lease. (Tr. 51) Applicant admitted he owed this debt, in his response to the SOR.

In February 2005, Applicant was called to active duty for 18 months. (Tr. 28) In November 2006, having been diagnosed with cancer, Applicant was medically discharged at the rank of E-5. Applicant receives \$1,200 in military retirement and a \$200 payment from the Veteran's Administration (VA) having received a VA disability rating of 20%. (Tr. 29, 36) In July 2009, he intends to go to court to argue for full retirement and an increase in his VA disability rating. (Tr. 29)

Applicant's retirement and unemployment compensation he was to receive after leaving active duty was intercepted and sent to his ex-wife for child support. (Tr. 30) Applicant pays his ex-wife \$550 per month child support. Applicant's September 2008 credit bureau report (CBR) lists a balance of \$52,126. Applicant's children, now ages 24, 26, and 28, are from his first marriage. Applicant incurred the child support obligation when the children were minors and he was unable to make his payments.

In July 2007, Applicant obtained his current job. (Tr. 30) He was laid off from work for two weeks in 2007, for a month in 2008, and more than a week in 2009. (Tr. 38, 44) His weekly take-home pay from his civilian job is \$700. (Tr. 44) His \$550 monthly child support payment is automatically deducted from his pay. (Tr. 46) After child support and taxes he receives \$243 from the VA and \$900 from the military. (Tr. 47) He pays \$300 rent per month, \$150 per month for groceries, \$100 per month for his cell phone, \$180 gasoline expense per month, \$82 monthly auto insurance, \$200 miscellaneous monthly expenses, and \$800 monthly car payment on his car and his daughter's car. Both his and his daughter's cars are 2004 models and both were purchased used. (Tr. 46, 47, 49) As previously stated, he pays \$438 monthly on his student loan obligation.

Applicant has \$300 in savings and \$1,000 in a 401(k) retirement plan. He does not have any credit cards. (Tr. 47, 48) His health insurance is paid by the military until July 2009. Prior to 2003, he received some financial counseling. (Tr. 48) Applicant is not currently being contacted by creditors concerning past due debt. Applicant hopes to obtain overseas employment paying more than his current job. (Tr. 54)

During a June 2008 or July 2008 interview, Applicant's debts were discussed using a copy of his CBR. (Tr. 56) A summary of Applicant's debts follows:

	Creditor	Amount	Current Status
a	An overdraft account placed for collection. Creditor offered to settle this matter for \$245.	\$455	Unpaid. Applicant stated he would pay the debt within a few weeks. (Tr. 38) No evidence of payment has been received.
b	Unpaid rent placed for collection.	\$398	Unpaid. Applicant's daughter's apartment was in his name and this was the balance due when she moved. (Tr. 39)
c	Unpaid rent placed for collection.	\$8,975	Unpaid.
d	Credit card account placed for collection.	\$9,348	Unpaid. Applicant does not know why this debt is so large. The credit card had a \$3,000 limit. (Tr. 40)
e	Cable company account placed for collection.	\$466	Unpaid. Applicant did not pay the cable bill when he moved to a new state. (Tr. 41)
f	Account placed for collection.	\$88	Unpaid. Applicant is uncertain about this debt, but admitted owing it in his response to the SOR. (Tr. 41)
g	Credit card account placed for collection.	\$1,142	Unpaid. This was a credit card he had while married. He intends to pay this debt. (Tr. 41)
h	A telephone provider account placed for collection.	\$283	Unpaid. Applicant has talked to the creditor. (Tr. 42)
i	Student loan account placed for collection. (Ex. 2, Ex. 3)	\$52,360	Paying. Applicant pays \$438 monthly on his student loans.
j	Student loan account placed for collection. (Ex. 2, Ex. 3)	\$26,337	Paying. Applicant pays \$438 monthly on his student loans.
k	Credit card account placed for collection. (Ex. 3)	\$641	Unpaid. Applicant is uncertain about this debt, but admitted owing the debt.
l	Collection agency collecting for a beeper store account placed for collection. (Ex. 3)	\$56	Unpaid. Applicant denied owing this debt. (Tr. 42)

m	Credit card account placed for collection. Account was opened in November 1999. (Ex. 3)	\$1,519	Unpaid. A credit card Applicant had while married. Applicant acknowledged it was his debt. (Tr. 42)
n	Cable account placed for collection.	\$54	Applicant stated he had contacted the creditor and had a zero balance on the account. (Tr. 43) Debt appears on his May 2008 CBR (Ex. 3), but not on his September 2008 CBR. (Ex. 2)
o	Account placed for collection. (Ex. 3)	\$15,023	Unpaid. Applicant asserts this was a 1996 or 1997 Chevrolet truck owned during his second marriage, which was returned. (Tr.26, 52)
	Total debt listed in SOR	\$117,145	

### **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 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 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 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 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 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 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 12 accounts placed for collection which total in excess of \$38,000. Seven of Applicant's debts were under \$500 each, and together totaled approximately \$1,800. 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;

(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 largest debts Applicant owes are his student loans and child support obligation. He is making \$438 monthly payments on approximately \$98,000 of student loans with the Department of Education. (\$34) The student loans owed a private lender are deferred until February 2010. He was interviewed about his debts in June or July 2008. Since that date, he has paid a \$54 cable bill. Even though six additional debts are under \$500 each, he has paid only this one small debt since receiving the November 2008 SOR.

AG ¶ 20(a) does not apply. Applicant has numerous accounts placed for collection, which remain unpaid. They are relatively recent having occurred following his 2002 divorce. The debts are the types that are likely to recur and his failure to address them does cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) applies because Applicant experienced divorce, loss of employment, was homeless for seven months ending in January 2003, and currently suffers from cancer. Until July 2009, his medical insurance will be paid by the military. Applicant's financial problems were contributed to by divorce and child support obligations. However, since obtaining his current job in April 2007, he has been unemployed for less than two-months in that two-year period, and has only been able to pay one small debt.

Prior to 2003, Applicant did receive some financial counseling. Currently, creditors are not contacting him. However, there are no clear indications that the

problem is being resolved or is under control because more than \$38,000 in 12 accounts remains unpaid. AG ¶ 20(c) does not apply.

As of September 2008, the balance of his child support obligation was \$52,126. His child support obligation is not a debt of concern listed in the SOR. However, how he meets this obligation offers insight as to how Applicant addresses his financial obligations. His \$550 monthly child support payments are automatically deducted from his pay. Applicant is paying part of his student loan obligation and his other student loans are deferred until February 2010. His payment of these obligations reflects a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) applies to his student loans obligation and child support obligation.

AG ¶ 20(e) does not apply because Applicant is not disputing the legitimacy of the past-due debts. In his response to the SOR, the only debts he initially denied were his student loans and two other debts totaling \$110. At the hearing, Applicant stated there were some debts he was uncertain about and did not know why two of the debts were so large, but he provided no proof to substantiate he had disputed these debts.

### **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 incurred a large student loan obligation obtaining his bachelor's and master's degrees, but is addressing those obligations. In 2002, he suffered the unfortunate events of both a divorce and being homeless. Additionally, he was unemployed for periods of time.

The likelihood Applicant will address the unpaid accounts is based, in part, on what he has done since learning of the government's concern regarding his finances. During the summer of 2008, he was interviewed about his finances and past due



obligations. In November 2008, the SOR was issued. Other than his child support and student loan payments, in the five months following the SOR, he paid only a single debt of less than \$100. Other relatively small obligations remain unpaid. Two of the unpaid accounts placed for collection were under \$100 each. Seven of Applicant's debts were under \$500 each. Applicant has done little to address his financial problems. He has failed to mitigate or rebut the financial considerations security concern.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances, a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

### **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**

Subparagraphs 1.a – 1.h:	Against Applicant
Subparagraphs 1.i and 1.j:	For Applicant
Subparagraphs 1.k – 1. m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.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.

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CLAUDE R. HEINY II  
Administrative Judge