



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



In the matter of:)	
)	
)	ISCR Case No. 08-10824
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connel, Esq., Department Counsel
For Applicant: *Pro Se*

August 18, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had two unpaid judgments and eight accounts charged off or placed for collection. The two judgments and two accounts placed for collection, which total in excess of \$38,000, remain unpaid. 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

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.

Statement of Reasons (SOR) on January 29, 2009, detailing security concerns under financial considerations.

On March 18, 2009, 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 April 24, 2009. The FORM contained seven attachments. On May 5, 2009, 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.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on June 4, 2009. As of July 31, 2009, no response had been received. On August 6, 2009, I was assigned the case.

Findings of Fact

Applicant admitted owing six delinquent debts, which totaled approximately \$41,000 and denied owing four debts, which totaled approximately \$45,000. In Applicant's Answer to the SOR, he asserts the debt listed in SOR ¶ 1.e (\$8,609) is the same debt as that listed in SOR ¶ 1.j (\$17,389). He also asserts the debt listed in SOR ¶ 1.a (\$7,519) is the same debt as that listed in SOR ¶ 1.i (\$16,831). He denies the factual allegations in SOR ¶ 1.h (\$16,706). He denies the allegations in SOR ¶ 1.f (\$3,409) because the debt has been paid. Applicant admitted the remaining allegations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 40-year-old quality assurance inspector who has worked for a defense contractor since July 2008, and is seeking to obtain a security clearance. In 2002, Applicant was the owner-operator of a small trucking company. In Applicant's response to the SOR, he states a business downturn resulted in him dissolving the business and selling his equipment. In his July 18, 2008 Electronic Questionnaires for Investigations Processing (e-QIP), Applicant stated he was injured (not further explained) and was unable to continue his business. (Item 5)

Applicant's December 2008 credit bureau report (CBR) lists two judgments with the same creditor in the amounts of \$7,519 (SOR ¶ 1.a) and \$6,967 (SOR ¶ 1.b). (Item 6, page 1 of 4) The same judgments are listed on Applicant's August 2008 CBR. (Item 7, page 4 of 21) In this response to the SOR, Applicant asserts the \$7,519 judgment listed in SOR ¶ 1.a is the same debt listed as owed to a different creditor. (SOR ¶ 1.i, \$16,831) Applicant provided no documentation supporting his assertion that the two debts were one obligation.

Applicant provided a February 2009 letter from a law firm collecting for the lender listed in SOR ¶ 1.a and ¶ 1.b, which indicated the law firm had agreed to accept a down payment of \$228 on or before March 25, 2009, and additional monthly payments of \$228 on the 25th of subsequent months. (Response to SOR, Attachment 2) Applicant

provided no documentation that payment was made in accord with the offer of settlement.

Applicant provided a March 2009 letter from the lender of the debts listed in SOR ¶ 1.c (\$400) and SOR ¶ 1.d (\$1,029). Both accounts were settled in full. (Response to SOR, Attachments 3, 4A, and 4B) The debts listed in SOR ¶ 1.e (\$8,609) and SOR ¶ 1.j (\$17,389) have been settled provided Applicant's check was not returned. (Response to SOR, Attachments 5 and 6) The collection agency's letter references the original creditor.

The collection account listed in SOR ¶ 1.f (\$3,409) was settled in full. (SOR response, Attachment 7) The law firm collecting the debt listed in SOR ¶ 1.g (\$7,534) agreed to accept a down payment of \$1,230 on or before August 28, 2008 and to accept \$200 on September 28, 2008 and \$200 monthly on the 28th of subsequent months. (Response to SOR, Attachment 8) As of February 2009, the law firm had received \$2,230 on this agreement, which was the amount Applicant was to have provided by that date. However, Applicant has failed to provide documentation of any payments after February 27, 2009.

Applicant's August 2008 CBR and December 2008 CBR lists three collection accounts with the same collection agency. The accounts include: a \$15,835 balance (SOR ¶ 1.i, \$16,831); a \$15,528 balance (SOR ¶ 1.h, \$16,706); and an \$8,578 balance (the creditor listed in SOR ¶¶ 1.a and 1.b). (Item 7, page 14 of 21 and page 15 of 21) Applicant was summoned to answer a complaint against him by this collection agency. (SOR response Attachment 9) The summons states a copy of the complaint was attached; however the complaint is not included in the FORM. Without the complaint it is impossible to determine to which of the three accounts the complaint refers.

However, Applicant admits owing this collection agency the debt listed in SOR ¶ 1.i. He arranged to make a down payment of \$288 on or before March 25, 2009, and make subsequent payments of \$288 on the 25th of subsequent months beginning on April 25, 2009. (Response to SOR, Attachment 1) Applicant provided no documentation he made any of the payments.

In his May 2007 answer to the summons, Applicant stated he did not owe the debt and demanded trial by jury. (SOR response Attachments 10 and 11) Applicant provides this information when he is referencing the account placed for collection listed in SOR ¶ 1.h (\$16,706). The collection account was listed in Applicant's March 2008 CBR. (Item 7) Applicant asserts there have been no additional efforts to collect this debt following his answer to the summons. The summons and Applicant's answer to the summons are insufficient to establish the debt has been paid or is no longer a legal obligation.

The FORM put Applicant on notice that documentation was lacking to support his assertion that two of the debts were for the same obligation, that he had made payment

in accord with the two settlement offers, and that he did not owe the debt listed in SOR ¶1.h. No further documentation was received.

A summary of the SOR debts follows:

	Creditor	Amount	Current Status
a	Credit card company judgment.	\$7,519	Unpaid. Applicant asserts this debt is the same debt as SOR ¶1.i. Applicant failed to provide documentation proving the two debts are the same obligation.
b	Credit card company judgment.	\$6,967	A repayment offer was made by the creditor. Applicant failed to show payment in accord with the offer.
c	Medical account placed for collection.	\$400	Settled in full. \$930 paid by credit card authorization. (Response to SOR, Attachment 3, 4A, and 4B)
d	Medical account place for colletion.	\$1,029	Settlement reached. See SOR ¶ 1.c. Settled in full. (Response to SOR, Attachment 4A)
e	Credit card account charged off.	\$8,609	Settlement reached. Creditor will accept \$3,300 if received by February 26, 2009. (Response to SOR, Attachment 5) Account settled unless the check is returned by the bank. (Response to SOR, Attachment 6)
f	Account placed for collection.	\$3,409	Settlement reached. (Response to SOR, Attachment 7)
g	Account placed for collection.	\$7,534	Settlement reached. As of February 27, 2009, creditor had received \$2,230. (Response to SOR, Attachment 8)
h	Account placed for collection. Applicant denied this debt.	\$16,706	Unpaid. Documentation provided by Applicant (Response to SOR, Attachments 9 and 10) fails to establish the debt has been paid or is not owed.
i	Account placed for collection.	\$16,831	Creditor offered a repayment plan to start in March 2009. (Response to SOR, Attachment 1) Applicant failed to provide documentation that payments have been made in accord with the offer.

j	Collection agency attempting to collect the account listed in SOR ¶ 1.e.	\$17,389	Settlement reached. (Response to SOR, Attachment 5) Account settled unless the check is returned by the bank. (Response to SOR, Attachment 6)
		\$86,393	Total debt listed in SOR

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 must be considered 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 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 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 admitted owing six delinquent debts, which totaled approximately \$41,000 and denied owing four debts, which totaled approximately \$45,000. Applicant was put on notice in the FORM that documentation supporting his assertions would be necessary. No documentation was received. Applicant asserts, but failed to document, the judgment listed in SOR ¶ 1.a (\$7,519) was the same debt listed in SOR ¶ 1.i. He has not made payment on either debt. He asserts he has reached agreement to repay the accounts listed in SOR ¶ 1.b (\$6,967) and SOR ¶ 1.i (\$16,831). However, he provided no documentation showing payments have been made supporting the settlement offers.

The account listed in SOR ¶ 1.h (\$16,706) remains unpaid. Applicant denied this debt and asserted there had been no further efforts to collect this debt. However, he

received a summons related to this debt and the documentation he provided, the summons and his answer to it, are insufficient to support his assertion he no longer owes this debt. These four debts total in excess of \$38,000.

Applicant has failed to establish he had paid four debts, which total \$38,726. 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; or

(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 asserts his financial problems began in 2002, when he was the owner-operator of a small trucking company, and either a business downturn or an injury prevented him from continuing his business. There is no evidence that four of the debts were paid or otherwise addressed to show there are not of security concern. I am unable to conclude they occurred under such circumstances that they are unlikely to recur and do not cast doubt on the individual's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) has limited applicability because Applicant's financial problems started with a business down turn or injury, which are conditions beyond his control. However, that event occurred seven years ago and four of the debts remain unaddressed.

AG ¶ 20(c) does not apply because there is no evidence Applicant has received any financial counseling nor is there a clear indication that the problem is being resolved or is under control since the four debts, which total in excess of \$38,000, remain unpaid.

AG ¶ 20(d) applies to the six debts (SOR ¶ 1.c, 1.d, 1.e, 1.f, 1.g, and 1.i) that were settled. He has shown a good-faith effort to repay these obligations. I find for Applicant as to SOR ¶ 1.g even though he failed to document he was making the payments required by the settlement offer. He provided no cancelled checks or other documentation establishing payment. I find for him as to this debt because the creditor's letter of February 2009 (Response to SOR, Attachment 8) stated the creditor had received \$2,230.

Applicant has failed to document a good-faith effort to repay the four remaining debts. For AG ¶ 20 (d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling these four debts is needed, which is not present here. Applicant has shown there was an offer to settle two of these debts. However, the offer was contingent on payment being made in a timely and systematic manner. There is no documentation that payment was made or continued until the debt was paid.

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 is 40 years old and sufficiently mature to make prudent decisions about his finances. He has settled six of the ten debts. Four debts totaling in excess of \$38,000 have yet to be addressed.

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 four delinquent obligations, established compliance with a repayment plan, or otherwise suitably 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

Subparagraph 1.a and 1.b:	Against Applicant
Subparagraph 1.c—1.g:	For Applicant
Subparagraph 1.h and 1.i:	Against Applicant
Subparagraph 1.j:	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.

CLAUDE R. HEINY II
Administrative Judge