



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



In the matter of:)
)
) ISCR Case No. 08-11098
)
)
Applicant for Security Clearance)

Appearances

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

November 4, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has two unpaid judgments, a federal tax lien, and 21 additional delinquent accounts totaling in excess of \$150,000. He has failed to document payment on any but one of the debts. 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 June 8, 2009, detailing security concerns under financial considerations.

On July 1, 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 August 10, 2009. The FORM contained nine attachments. On August 13, 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.

On September 9, 2009, Applicant responded to the FORM and presented a letter with exhibits. Department Counsel did not object to the material. Applicant's response was admitted as exhibits A through C into the record. On September 30, 2009, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.a, 1.d, 1.h – 1.n, and 1.t – 1.y. Applicant admitted the remaining factual allegations, with explanations. 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 56-year-old program manager who has worked for a defense contractor since August 2008. The record fails to indicate if Applicant has a security clearance, but he did hold a top secret security clearance when in the Air Force. In 2002, Applicant retired from the U.S. Air Force as a lieutenant colonel (O-5). (Item 4)

Following his return from an overseas embassy position in January 2000, Applicant had difficulties with credit card bills being delivered to his overseas address. Between September 2001 and September 2002, he was late paying his credit card debts. (Item 5)

In March 2009, Applicant responded to written interrogatories. (Item 5) Between 1999 and 2001, Applicant's mother² and mother-in-law each suffered from cancer. Due to both mothers being sick, Applicant and his spouse traveled from Europe to the U.S. Applicant was stationed overseas and traveling back to the U.S. impacted their finances. (Item 5) In 2001, his youngest son became addicted to alcohol and drugs during his first year in college. Applicant incurred expenses paying for his son's rehabilitation, medical bills, and legal bills.

Twice Applicant has had problems paying his federal income tax in a timely manner. In October 2005 and November 2005, the Internal Revenue Service (IRS)

² In 2007, his mother died and his mother-in-law has since become handicapped. (Applicant's response to FORM)

garnished his wages. (Item 5) Applicant asserts he set up a repayment plan before the garnishment commenced. The garnishment lasted two months. Applicant also owed \$19,000 for unpaid 2007 federal income tax. (Applicant's Response to FORM) He asserts he is making \$1,200 monthly payments to the IRS as agreed. (Item 3)

Between July 2007 and August 2008, Applicant was unemployed. Applicant fell behind on his debts, mortgage, and car payments. Applicant's September 2009 credit bureau report (CBR) indicates he was 60-days past due for June and July 2009, 90-days past due for April and May 2009, and 120-days past due for the 13 months previous. (Ex. 3) The same CBR indicates he has been current on his second mortgage for the months of May, June, and July 2009, but had been 120-days past due five times during the previous year. (Ex. 3) Applicant disputes being late paying his second mortgage.

In February 2006 and May 2007, Applicant was interviewed concerning his financial situation. In February 2006, Applicant stated all of his student loans and the student loans for his two children were unpaid. (Item 5) In response to the FORM, Applicant asserts the four student loans with the Department of Education have been consolidated into a single loan and the three student loans with a state higher education lender have been consolidated into a single loan. No documentation supporting his assertion is included in the FORM or his response to it.

A \$4,057 judgment by a state higher education lender (SOR ¶ 1.b) was the result of Applicant having cosigned on his son's educational loan. In March 2009, he stated he had only recently become aware of the judgment. He asserts his son is on a monthly repayment plan. Applicant requested documents from creditor. (Item 5)

As of February 2006, Applicant's monthly net income was \$12,016 and his monthly expenses were \$3,325. He asserted he was paying \$5,829 on his monthly debts, which included: \$3,300 for mortgage, \$900 for car payments, \$400 payment to the IRS, and \$250 on combined student loans. Applicant's monthly net remainder (net income less net expenses and debt payment) was approximately \$2,800. (Item 5) No documents were presented as to payment on these debts.

In response to the FORM, Applicant included a copy of a certified mail receipt dated July 17, 2009, showing mail sent to a credit bureau. (Ex. B) Following the receipt are two pages asking the credit bureau to update his CBR. Applicant enclosed a copy of his September 2009 CBR (Ex. C) from one of the three major credit bureaus.

Applicant asserts he is making \$1,200 monthly payments on the \$19,444 federal tax lien (SOR ¶ 1.c); \$585 monthly payments on \$22,268 owed on a national credit card account (SOR ¶ 1.e); \$315 monthly payments on the student loans of \$12,263 with the Department of Education (\$12,263, SOR ¶ 1.e, \$18,900, SOR ¶ 1.g, \$8,304, SOR ¶ 1.r, and \$11,803, SOR ¶ 1.s); and is making \$285 monthly payments on the \$15,217 student loans with a state higher education lender (\$7,983, SOR ¶ 1.o, \$2,186, SOR ¶ 1.p, and \$3,144, SOR ¶ 1.q). However, Applicant provided no documentation supporting

his assertion of timely monthly payments on these accounts. No cancelled checks, statements from creditors, bank statements evidencing monthly withdrawals of these amounts, or other documentation of payment were received.

In his answer to the FORM, Applicant states a number of accounts were in satisfactory status as evidenced by Ex. C. Applicant's September 2009 CBR lists six accounts being reported as paid or being paid as agreed. However, the account numbers listed in his September 2009 CBR are not the same account numbers listed in Applicant's CBR supporting the SOR. There is no showing that the account numbers from the earlier CBR represent the same accounts in the later CBR. Those six creditors are: \$2,576 owed on a national credit card account (SOR ¶ 1.i); \$3,956 owed on a national credit card account (SOR ¶ 1.j); two credit union accounts of \$750 (SOR ¶ 1.k) and \$912 (SOR ¶ 1.w); and two accounts \$1,052 (SOR ¶ 1.t) and \$1,231 (SOR ¶ 1.u) for vehicles purchases by his sons with the same creditor.

Applicant's answer to the FORM states five accounts were being paid satisfactorily as evidenced by his September 2009 CBR. (Ex. 3) However, those five creditors are not listed in that CBR. Those accounts are: a \$753 collection (SOR ¶ 1.l) by an agency collecting for the same creditor listed in SOR ¶ 1.j; two accounts \$2,733 (SOR ¶ 1.m) and \$2,077 (SOR ¶ 1.n) with the same department store; a \$1,075 bank account (SOR ¶ 1.v); and \$5,340 owed to a university (SOR ¶ 1.x).

There is no evidence Applicant has paid a \$2,151 judgment (SOR ¶ 1.a) or a \$4,057 judgment obtained by a state higher education lender (SOR ¶ 1.b). In February 2006, Applicant indicated he was going to investigate the \$19,286 (SOR ¶ 1.y) debt being collected by a collection agency for a national credit card company.

Applicant's September 2009 CBR lists one bank credit card account (SOR ¶ 1.h) as paid or paying as agreed on. (Ex. 3) The account number in the CBR is the same account number in the CBRs supporting the SOR.

A summary of the 25 debts asserted in SOR follows:

	Creditor	Amount	Current Status
a	Judgment. Debt denied by Applicant.	\$2,151	Applicant asserts this was settled in July 2008. Applicant presented no evidence of settlement or payment.
b	Judgment by state higher education student loan.	\$4,057	Unpaid. Appears on Applicant's September 2009 CBR. (Ex. C)
c	IRS Federal Tax lien for 2007 income	\$19,444	Unpaid. Appears on Applicant's September 2009 CBR. (Ex. C) He asserts he is making monthly payments of \$1,200. (Item 3) There is no

	tax.		documentation of payment having been made.
d	National credit card account. Debt denied by Applicant.	\$1,997	Unpaid. \$1,551 past due appears on Applicant's September 2009 CBR. (Ex. C) Applicant asserts this was paid in full.
e	National credit card account.	\$22,268	\$20,484 was charged off as a bad debt. (Ex. C) The high balance was \$22,693. This account shows the \$1,551 past due, which appears in SOR ¶ 1.d. In his SOR response, Applicant asserts he was making \$585 monthly payments on this debt. (Item 3) Applicant asserts he has made 20 consecutive payments as agreed. There is no documentation supporting his assertion or documentation of payment having been made.
f	Federal student loan.	\$12,263	Unpaid. In his SOR response, Applicant asserts he was making \$315 monthly payments on this debt. (Item 3) In his answer to the FORM, he states the account is in satisfactory status as evidenced by Ex. C; however, this account does not appear in Ex. C. There is no documentation establishing payment.
g	Federal student loan.	\$18,900	See SOR ¶ 1.f.
h	Bank credit card account. Debt denied by Applicant.	\$1,868	This account was paid or is being paid as agreed. (Ex. C)
i	National credit card account. Debt denied by Applicant.	\$2,579	Applicant asserts he disputed this account in 2006 as paid in full and it does not appear on his CBR. (Item 5) Applicant asserts account is in satisfactory status and was paid in full in November 2007. (Item 5) Account numbers with this creditor do not match earlier CBR account numbers with this same creditor.
j	National credit card account. Debt denied by Applicant.	\$3,956	Applicant asserts he disputed this account in 2007 as paid in full and it does not appear on his CBR. (Item 5) Account closed at consumer's request. (Item 8) Applicant asserts account is in satisfactory status and was paid in full in November 2007. (Item 5) Account numbers with this creditor do not match earlier CBR account numbers with this same creditor.

k	Credit Union account. Debt denied by Applicant.	\$750	Applicant asserts account was paid in full in 2004. CBR dated January 2009 lists the account as "paid." (Item 5) Item 8 lists a \$750 charge off. Applicant asserts he disputed this account in 2006 as paid in full and it did not appear on his CBR. (Item 5) Applicant asserts account is in satisfactory status and was paid in full in November 2007. (Item 5) Account numbers with this creditor do not match earlier CBR account numbers with this same creditor.
l	Collection agency account. Debt denied by Applicant.	\$753	Asserts account was disputed as paid in full and does not appear on CBRs. (Item 5) As of February 2007, Applicant stated he would check into this account. (Item 5) In his answer to the FORM, he states the account is in satisfactory status as evidenced by Ex. C. This creditor does not appear in Ex. C.
m	Department store account. Debt denied by Applicant.	\$2,733	Asserts account was settled in 2006. (Item 5) In February 2006, he asserted he had set up payments with this and the following account, both with the same department store. In his answer to the FORM, he states the account is in satisfactory status as evidenced by Ex. C. This creditor does not appear in Ex. C. Same creditor as listed in SOR ¶ 1.n.
n	Department store account. Debt denied by Applicant.	\$2,077	Unpaid. Second account with the same creditor listed in SOR ¶ 1.n. Same creditor as listed in SOR ¶ 1.m.
o	State student loan.	\$7,983	Applicant asserts this debt and the following two debts, all with the same state educational lender, have been consolidated into a single loan with a balance of \$15,217. (Item 5) In his answer to the SOR, Applicant asserts he is making \$285 monthly payments on this debt. (Item 3) In his answer to the FORM, he states the account is in satisfactory status as evidenced by Ex. C. This creditor does not appear in Ex. C.
p	State student loan.	\$2,186	See SOR ¶ 1. o.
q	State student loan.	\$3,144	See SOR ¶ 1. o.

r	Federal student loan	\$8,304	There is no documentation showing any payment. Applicant's September 2006 CBR indicates the account was assigned to an attorney for collection as it had been 120 days or more past due. See SOR ¶ 1.f.
s	Federal student loan.	\$11,803	See SOR ¶ 1.f.
t	Applicant co-signed on son's car. Debt denied by Applicant.	\$1,058	Applicant asserts account was paid in full in November 2007. (Item 5) Reported as a loss by credit grantor on Applicant's September 2006 CBR. Applicant asserts account is in satisfactory status (Ex. C) Account numbers with this creditor do not match earlier CBR account numbers.
u	Applicant co-signed on second son's car. Debt denied by Applicant.	\$1,231	Applicant asserts account was paid in full in November 2007. (Item 5) \$2,731 was charged off. The unpaid balance was reported as a loss by the credit grantor. Applicant asserts account is in satisfactory status (Ex. C) Account numbers with this creditor do not match earlier CBR account numbers.
v	Bank credit card account. Debt denied by Applicant.	\$1,075	Asserts this account was disputed as paid in full in 2007 and does not appear on his CBR. (Item 5) In his answer to the FORM, he states the account is in satisfactory status as evidenced by Ex. C. Applicant's September 2009 CBR does not list an account with this creditor. (Ex. C)
w	Federal Credit Union account. Debt denied by Applicant.	\$912	Applicant asserts this was a personal loan paid in full in 1999 and does not appear on his CBRs. (Item 5) Applicant asserts account is in satisfactory status. (Ex. C) Account numbers with this creditor do not match earlier CBR account numbers.
x	Collection action for university account. Debt denied by Applicant.	\$5,340	In February 2006, he stated he was going to investigate this debt. (Item 5) In his answer to the FORM, he states there is no change on this account. (Ex. C)
y	Collection agency collecting for national credit card account. Debt denied by	\$19,286	In March 2009, Applicant stated he was contacting the credit bureau to dispute this debt. He was awaiting a response. (Item 5) In February 2006, he stated he was going to investigate this debt. (Item 5) In his answer to the FORM, he states the account is

	Applicant.		in satisfactory status as evidenced by Ex. C. Applicant's September 2009 CBR does not list an account with this creditor. (Ex. C)
		\$158,118	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 as agreed. Absent substantial evidence of 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 had two unpaid judgments, a federal tax lien, and 21 other delinquent accounts totaling approximately \$158,000. He has provided insufficient documentation to show significant progress resolving any of his debts, except on the debt listed in SOR ¶ 1.h. 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.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the expense of helping his mother and mother-in-law during their illnesses. Between 1999 and 2001, Applicant's mother and mother-in-law each suffered from cancer, which required Applicant and his spouse to return to the U.S. This travel impacted on his finances. Additionally, in 2001, Applicant incurred expenses paying for his son's rehabilitation, medical bills, and legal bills.

Some of the bills related to his relatives may have occurred under circumstances unlikely to recur. However, his 25 delinquent debts are both numerous and recent, as they remain unpaid. These unexpected expenses related to his relatives occurred eight years ago. AG ¶ 20(a) does not apply.

In addition to the expenses related to his relatives, Applicant was unemployed July 2007 and August 2008. Under AG ¶ 20(b), these are conditions largely beyond Applicant's control. However, AG ¶ 20(b) has limited applicability because Applicant's latest CBR indicates he was frequently 60-days, 90-days, and 120-days past due on both his first and second mortgages during the last 18 months. Applicant disputes being late paying his mortgages; however, he provided no documentation showing his payments were timely made during the last year. I fail to find Applicant acted responsibly under the circumstances when he failed to make timely mortgage payments.

AG ¶ 20(c) does not apply because there is no showing Applicant received financial counseling and there is no clear indication that the problem is being resolved or is under control.

Applicant's most recent CBR (Ex. C) indicates the debt listed in SOR ¶ 1.h is being paid as agreed. His recent CBR fails to support that any of the other financial obligations listed in the SOR are being paid as agreed. Applicant asserts, but fails to

document, that he is making timely, monthly payments to four creditors, which relates to nine of the 25 listed delinquent obligations. He provided no cancelled checks, no letters from the creditors, no monthly bank account statements showing monthly withdrawals for the amounts in question, no monthly account balances from the creditors showing the balance owed is being reduced, or proof that he is making timely payments. AG ¶ 20(d) does not apply except to the debt listed in SOR ¶ 1.h.

Applicant disputes a number of the debts. AG ¶ 20(d) does not apply. Applicant has failed to show he has a reasonable basis to dispute the legitimacy of those debts. Nor this he provide documented proof to substantiate the basis of any dispute.

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 relevant 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. During the past ten years, Applicant has experienced some expenses beyond his control. Those expenses, related to his mother, mother-in-law, and son, together with his year of unemployment, were events beyond his control. He asserts a number of the debts have been paid and he is making payment on additional debts. However, he provided no documentation supporting his assertions. There is no evidence he has made any payments or paid any debts, except for the debt listed in SOR ¶ 1.h. He has more than \$150,000 in delinquent debt that he has failed to adequately address.

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 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

Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.y:	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