



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-11690
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro Se*

February 26, 2010

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant has 27 accounts placed for collection or other delinquent accounts, which total in excess of \$27,000. Applicant asserted, but failed to document, that some of the debts were included in his bankruptcy and that he was making payments on others. 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

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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 30, 2009, detailing security concerns under financial considerations.

On September 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 December 8, 2009. The FORM contained 10 attachments. On December 18, 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 January 18, 2010. As of February 18, 2010, no response had been received. On February 19, 2010, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.b, 1.e, 1.k, and 1.l. He asserts he is currently making payments on the remaining debts. 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 35-year-old field service engineer who has worked for a defense contractor since June 2008, and is seeking to obtain a security clearance.

In March 2009, when Applicant responded to written interrogatories, he included a personal financial worksheet. (Ex. 8) It showed monthly gross income of \$4,923, net income of \$3,520, monthly expenses of \$3,209, and monthly payment on debts of \$250, which left a net monthly remainder (income less expenses) of \$305. (Ex. 8)

When Applicant answered the written interrogatories, he was unfamiliar with three of the medical bills. (Ex. 8) His wife contacted his previous medical insurance and requested a list of all medical bills paid and unpaid. He believes there are numerous bills that should have been paid and were not. When the insurance company responds, he will review the medical bills to see what remains unpaid. (Ex. 8)

Applicant asserts, but provides no documentation, that he established an automatic payment of \$50 monthly on his student loan (SOR ¶ 1.p, \$3,217). (Ex. 8) Applicant owes his credit union for two repossessed vehicles (SOR ¶ 1.t, \$3,955 and SOR ¶ 1.u, \$10,952). In March 2009, he asserted he previously worked for the credit union and the credit union suggested he work part-time to repay the debts. Applicant was going to check with his current employer to determine if there was any conflict of interest preventing him from being so employed. There is no evidence of Applicant's employer's response or if Applicant actually began working for the credit union.

Applicant asserts, but again failed to document, that he contacted all of his creditors, except for three, and was able to consolidate all the debts into four accounts. He provided no further information about the accounts and failed to provide any information that payment had been made on the accounts.

Applicant included in his March 2009 written response, portions of a February 2009 on-line credit report. (Ex. 8) The credit report indicates a number of Applicant's debts were included in or discharged in a bankruptcy. No bankruptcy schedules or other bankruptcy forms were part of the record.

In March 2009, Applicant asserted he was going to use his anticipated tax refund to pay some of his debts. (Ex. 8) There is nothing in the record indicating the size of the refund or showing that any of the refund was used to pay his debts.

The evidence includes four credit bureau reports (CBR) dated: July 23, 2008 (Ex.5), December 10, 2008 (Ex. 6), June 24, 2009 (Ex. 7), and December 7, 2009 (Ex. 9). Applicant was unemployed from March 2004 through June 2004 and January 2008 through June 2008. (Ex. 2) No further information on Applicant's periods of unemployment was provided.

Applicant asserted that he was making payment on a number of debts. (Ex. 3) He also asserted some of his debts were discharged in bankruptcy. (Ex. 8) Applicant's four CBRs submitted by the government do not list any of the SOR accounts placed for collection as having been in bankruptcy. A summary of Applicant's accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Chapter 7 bankruptcy filed August 26, 2005.	\$	Debts of \$79,351 were discharged. Applicant asserts the majority of his debt was medical.
b	Collection firm collection for a cable bill.	\$132	Denied the debt as having been paid November 2007. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
c	Collection firm collecting for medical services 8319.	\$461	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
d	Collection firm collecting for medical services 8599. Applicant's CBRs do not list this account as having been in bankruptcy.	\$899	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
e	Collection firm collecting for medical services 4286. Applicant's CBRs do not list this account as having been in bankruptcy.	\$66	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)

	Creditor	Amount	Current Status
f	Collection firm collecting for medical services 0497. Applicant's CBRs do not list this account as having been in bankruptcy.	\$445	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt has been consolidated and included in a payoff schedule. (Ex. 8)
g	Collection firm collecting for medical services 4659. Applicant's CBRs do not list this account as having been in bankruptcy.	\$161	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt has been consolidated and included in a payoff schedule. (Ex. 8)
h	Collection firm collecting for medical services 9077. Applicant's CBRs do not list this account as having been in bankruptcy.	\$221	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt has been consolidated and included in a payoff schedule. (Ex. 8)
i	Collection firm collecting on an unpaid electrical utility debt.	\$352	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
j	Collection firm collecting for an unpaid sewer bill.	\$126	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
k	Collection firm collecting for an unpaid cable bill.	\$49	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
l	Collection firm collecting for an unpaid library bill.	\$40	Denied. Applicant asserts this was paid March 2009. (Ex. 3) Applicant asserted this debt was discharged in his bankruptcy. (Ex. 8)
m	Collection firm collecting for an doctors' bill.	\$2,986	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted these debts have been consolidated and included in a payoff schedule. (Ex. 8)

	Creditor	Amount	Current Status
n	Unpaid medical services collection account 6187.	\$616	Applicant asserts he is currently making payments on this debt. (Ex. 3) Applicant asserted these debts have been consolidated and included in a payoff schedule. (Ex. 8)
o	Unpaid medical services collection account 9155.	\$393	Applicant asserts he is currently making payments on this debt. (Ex. 3)
p	Student loan placed for collection.	\$3,217	Applicant asserts he has a \$50 monthly automatic allotment paying the debt. (Ex. 8)
q	Unpaid medical services account collecting 4704.	\$509	Applicant asserted these debts have been consolidated and included in a payoff schedule. (Ex. 8) In his March 2009 response to the interrogatories, Applicant said he could not find any contact information about this debt. (Ex. 8)
r	Unpaid medical services collection account 5270.	\$95	Applicant asserted these debts have been consolidated and included in a payoff schedule. (Ex. 8) In his March 2009 response to the interrogatories, Applicant said he could not find any contact information about this debt. (Ex. 8)
s	Unpaid medical services collection account 7267.	\$138	Applicant asserted these debts have been consolidated and included in a payoff schedule. (Ex. 8)
t	Credit union collection account for automobile repossession.	\$3,955	Applicant was negotiating a consulting services contract in exchange for this debt. (Ex. 8)
u	Credit union collection account for automobile repossession.	\$10,952	Applicant was negotiating a consulting services contract in exchange for this debt. (Ex. 8)
v	Unpaid medical services collection account 5750.	\$802	Applicant asserts he is currently making payments on this debt. (Ex. 3)
w	Collection firm collecting for returned check.	\$38	Applicant asserts he is currently making payments on this debt. (Ex. 3)

x	Collection firm collecting for a gas utility bill.	\$265	Applicant asserts he is currently making payments on this debt. (Ex. 3)
y	Unpaid medical services collection account 5086.	\$228	Applicant asserts he is currently making payments on this debt. (Ex. 3)
z	Unpaid medical services collection account 2529.	\$127	Applicant asserts he is currently making payments on this debt. (Ex. 3)
a a	Collection firm collecting for unpaid telephone bill.	\$185	Applicant asserts he is currently making payments on this debt. (Ex. 3)
b b	Collection firm collecting for unpaid medical account. The SOR alleges a debt of \$728, however, Applicant's July 2008 CBR (Ex. 5) lists the debt at \$127.		This debt is a duplication of SOR ¶ 1.z for it has the same account number 2529.  Applicant asserts he is currently making payments on this debt. (Ex. 3) I find for Applicant as to this duplication.
c c	Collection firm collecting for unpaid medical account.	\$386	Applicant asserts he is currently making payments on this debt. (Ex. 3)
	Total debt listed in SOR	\$27,844	

### 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 for 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 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. In January 2006, Applicant had \$79,351 of debt discharged in bankruptcy. The SOR lists 28<sup>2</sup> accounts placed for collection or other past due indebtedness, which totaled approximately \$28,000. 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 accounts placed for collection are both numerous and recent. Half of the debts, 14 in number, are related to medical accounts placed for collection. Applicant is checking to see why his insurance did not pay these bills. The record provides no evidence of the nature of the medical services provided. There is no explanation why he had two cars repossessed. He was unemployed for four months in 2004 and six months in 2008. As the record has been presented, I am unable to find the debts were incurred under such circumstances that it is unlikely to recur or that they do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experienced two recent periods of unemployment, in 2004 and in 2008. Additionally, half of the accounts placed for collection were for medical bills. However, Applicant provided no additional information about the medical

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<sup>2</sup> Two of the debts listed are the same obligation.



condition so that I could find it was an unexpected medical emergency. AG ¶ 20(b) has only limited application.

AG ¶ 20(c) does not apply. There is no showing Applicant has received financial counseling or that his debts are under control. Applicant asserts he is paying his student loan, is talking to the credit union about part-time employment with them to excuse his debt, and asserts he is paying his other debts. He also asserted that many of the debts he now states he is paying were included in his bankruptcy.

In March 2009, Applicant asserted he had consolidated his debts into four accounts. Applicant's most recent CBR (Ex. 9) fails to support that any of his financial obligations, listed in the SOR, are being paid as agreed. Approximately a year ago, he said he would use his tax refund to pay some of the debt. He provided nothing showing that he received a tax refund or how he used the refund. He failed to document, that he is making timely, monthly payments on the four consolidated debts, or on his student loan. 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 other evidence of payments being made. Applicant has provided insufficient proof that he is making timely payments. AG ¶ 20(d) does not apply.

Applicant said he had paid the \$132 cable bill (SOR ¶ 1.b), a \$66 medical bill (SOR ¶ 1.e), the \$49 cable bill (SOR ¶ 1.j), and the \$40 library bill (SOR ¶ 1.k). He failed to document the payments. He is not disputing any of the remaining account placed for collection or other past due obligations. Therefore, AG ¶ 20(e) does not apply.

### **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.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for him in these matters, there is no evidence of documentation to support that the delinquent debts have been paid or are being paid in a manner agreeable to the creditors.

Applicant was unemployed twice in the recent past and half of his debts are for unpaid medical bills. These events are beyond his control. However, he has been employed with his current employer since June 2008, more than a year and a half. Almost a year ago, Applicant stated he would contact his creditors and start repaying his past due obligations, and would use his tax refund to make payment on his debts. There is no evidence he has done so.

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. 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, 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 failed to mitigate 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:	For Applicant
Subparagraph 1.b- 1.aa:	Against Applicant
Subparagraph 1.bb:	For Applicant
Subparagraph 1.cc:	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