



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-00055
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro Se*

March 30, 2010

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant had an unpaid judgment and ten accounts that were charged off or placed for collection, which totaled approximately \$15,000. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. Clearance is granted.

**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 on September 1, 2006.

Statement of Reasons (SOR) on June 22, 2009, detailing security concerns under financial consideration.

On July 10, 2009, Applicant answered the SOR, and requested a hearing. On August 5, 2009, I was assigned the case. On August 17, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on September 22, 2009.

The government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf and submitted Ex. A through K, which were admitted into evidence. On September 30, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted all the factual allegations, with explanations. 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 additional findings of fact:

Applicant is a 43-year-old information technology (IT) technician who has worked for various defense contractors over the past few years. He is currently unemployed and seeking to obtain a security clearance. If a clearance is obtained, a DoD contractor intends to hire him. Applicant received a U.S. Army certificate of appreciation for his "auspicious service" as a DoD contractor in Iraq during Operation Iraqi Freedom. (Answer to SOR) In 2003, Applicant was out of the state and returned briefly in 2004. (Tr. 39)

In 1996, when Applicant moved to a new state, he turned in his old vehicle license plates to his new state's Department of Transportation (DOT) when he received that state's license plates. In 1999, his old state finally received the plates from his new state's DOT. Applicant does not know why it took this long. However, because the plates were not immediately returned to his prior state, that state is demanding a \$100 restoration fee. (Tr. 49)

From 1999 through 2006, Applicant experienced periods of unemployment. From December 1997 through October 1999, Applicant was employed, and from October 1999 to September 2002, he was again employed, this time with an annual salary of \$55,000. (Tr. 57) This job was terminated when the company decided to move the operation to another state. (Tr. 40) Applicant was out of work, living on unemployment compensation, for a year before obtaining a job in Iraq in August 2003. (Tr. 51) That job lasted ten months. (Tr. 58) At the time, Applicant was married and his wife was working. During the marriage, his wife handled their finances and was responsible for sending payments on their debts. (Tr. 71) While out of the country, Applicant assumed his wife was paying their joint debts in a timely manner, which was an error. (Tr. 16)

In 2004 or 2005, Applicant obtained another overseas job, this time working in Kuwait. (Tr. 41, 51, 58) The job lasted four months and was followed by a four-month

job in Iraq. (Tr. 59) Applicant returned to the United States for about eight months before obtaining his next job in September 2006. (Tr. 42, 59) In April 2006, Applicant and his wife of 18 years divorced. (Ex. 1, p. 5, Tr. 42) For eight months in 2006, Applicant was unemployed. From September 2006 until September 2007, Applicant was employed in Iraq. (Tr. 52)

In 2007, he obtained a job lasting seven months in the United States. (Tr. 43) In March 2008, Applicant completed training and was DoD certified in an area of IT. (Tr. 42) In February 2008, he accepted a temporary out-of-state job. (Tr. 60) In May 2008, the job terminated and he was unemployed until August or September 2008, when he obtained a job, which lasted until May 2009. (Tr. 53) When that job terminated, Applicant went on government assistance until a month before the hearing. He was on food stamps for the last three months before they ran out, and he needs to reapply. (Tr. 57) A month prior the hearing, he obtained a part-time job as a disk jockey (DJ), which pays \$100 a night when he works. (Tr. 44, 55) Applicant has a DoD contractor waiting to hire him if he obtains a security clearance. (Tr. 72)

In December 2002, Applicant purchased a computer for \$1,200. Applicant quit making monthly payments on the computer when he was unemployed and later forgot about the debt. (Ex. 5) In 2003 or 2004, he began working with a credit counseling service that negotiated with his creditors and established a repayment plan. In 2004, Applicant was unemployed for six or seven months. (Ex. 5) He was unable to make his \$1,283 house payment for four months. In 2005, the house was sold and all obligations related to the house were paid.

In February 2009, Applicant retained a credit service to assist him with his debts. (Ex. 6, p. I-19, Tr. 36) The credit service contacted his creditors asking that they verify their accounts with Applicant. The credit service informed Applicant of his consumer credit rights. Establishing credit, paying the smaller debts first, seeking to have the interest rate lowered, and paying the creditors charging the highest interest rate first, were also discussed. (Tr. 37)

In September 2009, Applicant contacted a debt resolution company to establish a debt management program. (Ex. J) The program required Applicant to make \$138 monthly payments, which included a \$15 monthly service fee. (Ex. J) The plan would address the \$1,646 credit card debt (SOR ¶ 1.d) and the \$3,972 credit card debt (SOR ¶ 1.i). (Ex. K) Once the creditors verify the debts listed in SOR ¶ 1.a (\$244), SOR ¶ 1.e (\$389), and SOR ¶ 1.j (\$200), Applicant intends to include these accounts in his debt management plan. (Tr. 39)

Applicant and his ex-wife have two children. (Tr. 41) His oldest son, now 24 years old, is in the Navy, and was shot while serving in Iraq in January 2008. (Tr. 54) His son has recovered. His other son is a senior in high school preparing to go to college. (Tr. 54) His ex-wife is currently not working. Applicant's monthly budget lists \$1,200 monthly child support payments, which he is not paying. (Ex. 6, p. I-16, Tr. 56)

Currently, he pays her \$25 per month and owes her the remainder, which he intends to pay when his finances permit it. (Tr. 57)

A summary of Applicant's judgment, accounts charged off, accounts placed for collection, and other unpaid obligations and their current status follows:

SOR	Creditor	Amount	Current Status
a	Telephone service account in collection.	\$244	Applicant is disputing this debt. (Tr. 17) He believed he paid his last telephone bill. (Tr. 62) He has asked the creditor for a detailed billing summary. Once verified, Applicant intends to include this in his debt management plan. (Tr. 39)
b	Credit card company judgement. Applicant and his now ex-wife each had a credit card.	\$5,815	This is his ex-wife's debt. (Tr. 45) Applicant disputed this debt and creditor agreed to remove it from his CBR because Applicant was only an authorized user on the card. (Ex. B, Tr. 26, 34)
c	Account placed for collection.	\$404	Unpaid. Debt incurred for a urinalysis. If Applicant was hired the company would pay this debt. If not hired, Applicant would be responsible for paying it. Applicant was not hired. (Ex. C, Tr. 39)
d	Credit card account was charged off as a bad debt.	\$1,585	Included in Applicant's debt management plan. (Ex. J)
e	Television service account placed for collection. (Ex. 6, Ex. E)	\$389	Applicant is disputing this debt. (Tr. 17) Equipment was returned and the bill paid. He has asked the creditor for a detailed billing summary. Once verified, Applicant intends to include this in his debt management plan. (Tr. 39)
f	Alarm monitoring company account placed for collection. (Ex. F)	\$126	Applicant provided no documentation that this debt has been added to his debt management plan. (Tr. 39)
g	Cable account placed for collection.	\$185	Paid. Ex. G
h	Cable account placed for collection.	\$185	This was not Applicant's account. (Ex. G)
i	Credit card account placed for collection.	\$3,972	In August 2004, a consumer counseling service made a \$58 payment. (Ex. I) The debt is included in Applicant's current debt

			management plan. (Ex. J)
j	Division of Motor Vehicles tax lien.	\$100	Applicant is disputing this debt. (Tr. 17) The state where he previously lived is demanding \$100 restoration fee. (Tr. 49)
k	Computer account placed for collection.	\$2,387	Applicant offered to settle. Creditor stated it would not open a closed account and had sent the account to a collection firm. (Ex. H) That firm has offered a settlement of three monthly payments of \$471. (Tr. 49, 50)
	Total debt listed in SOR	\$15,392	

### 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. The SOR reflects a judgment and ten past due obligations, which total approximately \$15,500. 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 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nine SOR debts remain unpaid or unresolved, which makes them recent and numerous. AG ¶ 20(a) does not apply.

The DOHA Appeal Board has previously noted that an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

Due to circumstances beyond his control, specifically four periods of unemployment, Applicant has been unable to make progress on paying his bills. The Appeal Board's discussion of AG ¶ 20(b) in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) clarifies the applicability of this mitigating condition when an Applicant is unable to make substantial progress on delinquent debts after circumstances outside an applicant's control cause delinquent debt. The Appeal Board at 3 determined that administrative judge erred when he failed to explain,

. . . what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial

condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.

What constitutes sufficient responsible behavior to mitigate concerns depends on the facts of a given case. In the circumstances at issue here, Applicant was unemployed from August 2002 to August 2003, for six months in 2004, eight months in 2006, for four months in 2008, and for five months in 2009. Just prior to the hearing, Applicant was living on food stamps and government assistance. If he obtains his clearance, he has a job waiting for him with a DoD contractor. Additionally, in 2006 his marriage of 18 years ended, with the financial burden that accompanies divorce including a child support obligation. These unexpected events were beyond his control. AG ¶ 20(b) applies.

Applicant has acted responsibly given his limited resources. The SOR lists 11 past due obligations totaling approximately \$15,500. Applicant has paid one debt (SOR ¶ 1.g, \$185). He has disputed two debts (SOR ¶ 1.b, \$5,815 and SOR ¶ 1.h, \$185), totaling \$6,000. He has been told the largest of the SOR debts, the \$5,815 credit card judgment (SOR ¶ 1.b), will be removed from his CBR since he was only an authorized user on his wife’s credit card. He has arranged a debt management plan for three debts (SOR ¶ 1.d, \$1,585, SOR ¶ 1.f, \$126, and SOR ¶ 1.i, \$3,972), which total approximately \$5,700. Applicant is disputing two other debts (SOR ¶ 1.a, \$244 and SOR ¶ 1.e, \$389), which total \$600. However, there is no final resolution as to his disputes.

Three debts (SOR ¶ 1.c, \$404, SOR ¶ 1.j, \$200, and SOR ¶ 1.k, \$2,387), which total approximately \$3,000 remain unpaid. Applicant financial situation prevents him from accepting the settlement offer on SOR ¶ 1.k, \$2,387.

As previously stated, Applicant has three debts included in his debt management plan, which shows some a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant does not receive full mitigation under AG ¶ 20(d) because this arrangement was only recently made and there is no “meaningful track record” of debt payment.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See



Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has acted responsibly given his limited income. There is little else Applicant can currently do to rectify his poor financial condition. Applicant's approach is responsible in light of his limited resources. Neither the remaining \$3,000 of unpaid debt, nor his only recent enrollment in a debt management plan raises concerns about his current reliability, trustworthiness, or good judgment.

### **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.

The whole person factors against granting Applicant a clearance are significant; however, they do not warrant revocation of his security clearance. Applicant's failure to pay or resolve his just debts in accordance with contracts he signed was not prudent or responsible. He has a history of financial problems. However, the debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Additionally, his financial difficulties were increased because he was working overseas and relied upon his then wife to pay their debts in a timely manner with the money he was sending her.

The rationale for granting Applicant's clearance is more substantial. He was forthright and candid in his security clearance application, his responses to DOHA interrogatories, his responses to an OPM investigator, his SOR response, and in his testimony at his hearing about his financial problems. Several problems beyond his control adversely affected his financial status. In the past eight years, he has had four periods of unemployment and his 18-year marriage ended in divorce. He has arranged to start payment plans on three of the debts. I am confident he will keep his promise to pay his delinquent debts.

Applicant deserves substantial credit for his service in Southwest Asia at various times from 2003 through 2007. He has demonstrated his loyalty, patriotism, and trustworthiness through his service to the DoD as a contractor. He has served in the combat zone of Iraq risking his life to support DoD missions in that country. His son was wounded in the service of his country. There is simply no reason not to trust this patriotic American with our nation's secrets.

Applicant is 43 years old. He has demonstrated self-discipline, responsibility and dedication. His financial problems were caused by his unemployment, and family problems, rather than by his misconduct or irresponsible spending. Applicant is an intelligent person, and he understands his need to be financially responsible.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a—1.k: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge