



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



In the matter of: )  
)  
) ISCR Case No. 09-00390  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 31, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant had two unpaid judgments and 15 accounts that were delinquent, placed for collection, or charged off, which totaled approximately \$48,000. He paid \$500 each month in May 2009 and June 2009 on his past due or delinquent Sallie Mae student loans. Applicant has not successfully mitigated financial considerations security concerns. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant a Statement of Reasons (SOR) on February 27, 2009, detailing security concerns under Guideline F, financial considerations, based on a history of financial problems as evidenced by delinquent debts.

On April 9, 2009, Applicant answered the SOR, and requested a hearing. On April 30, 2009, I was assigned the case. On May 19, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on June 16, 2009. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence.

The record was kept open to allow Applicant to submit additional matters. On July 7, 2009, additional documents were received. There being no objection, the material was admitted into evidence as Exs. F through J. On June 24, 2009, the transcript (Tr.) was received. On June 30, 2009, the record closed.

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied four debts (SOR ¶¶ 1.a, 1.b, 1.d and 1.e) totaling approximately \$2,000 and admitted the remaining factual allegations. At the hearing, Applicant admitted the \$1,367 credit card debt (SOR ¶ 1.e), which had been placed for collection. (Tr. 29) Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 30-year-old project manager who has worked for a defense contractor since January 2008, and is seeking to obtain a security clearance. Applicant's supervisor states, Applicant has excelled at his job due to his dedication and hard work. (Ex. I) The facility security officer (FSO) states, Applicant is a very responsible individual who is diligent in security matters. (Ex. J)

Prior to college, Applicant worked for a company constructing tents and stages for events and as a pipefitter. (Tr. 29) In 2002, Applicant sustained a back injury preventing him from continuing with manual labor. When injured, he was out of work for four months. (Tr. 73) He reinjured his back in 2006, and was out of work for a week. (Tr. 75) He then chose to attend college pursuing an architectural degree, which he received in December 2005. (Ex. 1) Due to a paperwork problem, he did not receive his diploma until August 2008. (Tr. 100) While in school, Applicant moved into his parent's home, and his son, then age 5, went to live with his mother resulting in a child support obligation. (Tr. 32) As of July 2005, his child support was \$395 per month. (Tr. 33, Ex. E)

Applicant is seeking custody of his son, now 11-years-old. A custody hearing will be held in September 2009. (Tr. 33) Applicant estimates during the last 11 years he has spent between \$25,000 and \$30,000 in court costs and attorney's fees related to custody and child support. (Tr. 71) Applicant's most current earnings statement (Ex. H) lists a \$91.15 deduction for child support for a two-week period, which is less than his

monthly obligation. Applicant asserts he was current on his child support obligation when he talked to the department of child services a month ago. (Tr. 117)

While in college, Applicant started an internship at an architectural design firm and, in December 2005, started full-time employment with the firm. His starting pay was approximately \$36,000, which had increased to \$51,000 by the time he left. (Tr. 30, Ex. D) Applicant also worked part-time as a stage hand at concerts. (Tr. 72) In January 2008, he obtained his current job and his current salary is approximately \$72,000 a year. (Tr. 30, Ex. A) His monthly income after taxes is approximately \$3,400 of which he has budgeted \$1,000 each month to pay his student loans and other past due accounts. (Ex. B, Ex. H) The student loans were in forbearance through early 2009. In May 2009 and June 2009, he paid \$500 each month on his student loan obligation. (Ex. F) He has also budgeted \$200 per month to repay his mother.

During college, Applicant had various part-time jobs working as a stagehand or working as a doorman at bars and clubs. (Tr. 40-41) During college, he obtained student loans to cover the \$28,000 in tuition and \$10,000 to \$12,000 tuition for summer classes. (Tr. 29) Applicant's March 2008 and January 2009 credit bureau reports (CBR) (Ex. 2) lists numerous student loans. Those obligations are: a \$4,903 university collection account (SOR ¶1.f); a \$2,661 Department of Education collection account (SOR ¶1.g); six Sallie Mae student loans (SOR ¶1.h through ¶1.m) 1.b) totaling more than \$88,000, which were more than 120 days past due; and a \$26,000 student loan with an educational loan company that had been placed for collection (SOR ¶1.q). His CBR lists the monthly payment on the Sallie Mae student loans as \$533. (Tr. 60, Ex. 2) Applicant asserted when he logged onto his Sallie Mae account the monthly amount due was \$378. (Tr. 64)

At the hearing, Applicant stated he had never heard of the educational loan creditor listed in SOR ¶1.q (\$26,603). (Tr. 41) However, in February 2008, when he completed an Electronic Questionnaires for Investigations Processing (e-QIP), in response to question 28, he listed two delinquent student loans, one for \$70,000 and the other for \$26,728. (Ex. 1) The two amounts for student loans are very close. Applicant's March 2008 credit bureau report (CBR) lists the debt twice with a balance of \$26,603 and \$26,708. (Ex. 2) Applicant stated the student loan debt in SOR ¶1.h (\$26,593) might be the same debt as listed in SOR ¶1.q (\$26,603), but provided no documentation. (Tr. 48) Both debts remain unpaid. (Tr. 48)

After finishing college in 2005, Applicant asserts he consolidated his student loans. As of June 2009, Applicant owed Sallie Mae \$62,489. (Ex. F) There is no showing which student loans are included in this amount. Nor is there any documentation showing the \$26,000 student loan with an educational loan company (SOR ¶1.q) was consolidated into the Sallie Mae debt. Applicant acknowledges the \$4,903 university collection account (SOR ¶1.f) and the \$2,661 the Department of Education collection account (SOR ¶1.g) are not included in the Sallie Mae debt consolidation. (Tr. 111)

Applicant's monthly payment on the \$4,900 university loan is \$300. (Tr. 85) He has made some payments on this debt and said he could provide a payment history. (Tr. 85) No history was received.

While in college, Applicant had credit cards, which he thought he had paid. One debt is listed twice in the SOR. A collection agency is attempting to collect a \$1,367 debt (SOR ¶1.e), which is the \$1,102 credit card debt (SOR ¶1.p). (Tr. 49) A different credit card company obtained a 2005 judgment for \$1,068 (SOR ¶1.n), a 2004 judgment for \$2,593 (SOR ¶1.o), and wrote off a \$4,527 account (SOR ¶1.c). Applicant stated he never had that many credit cards with this creditor, but had failed to contact the credit card company about any the debts. (Tr. 56)

Applicant denied owing a \$395 debt (SOR ¶1.d) that a collection agency is attempting to collect on a telephone account that was placed for collection. Applicant did not contact the collection agency to discuss or challenge the debt. (Tr. 60)

In November 2008, Applicant informed his roommate of two years that he was leaving the first of the year. (Tr. 88, 120) They had a month-to-month lease. (Tr. 120) His roommate demanded an additional \$750 the week before Applicant was to leave. When Applicant did not pay the money, his roommate changed the locks. Applicant incurred unexpected expenses due to his roommate's conduct. (Tr. 88) Applicant intends to litigate the matter in court. (Tr. 89) During this period, Applicant borrowed money from his mother to pay his expenses, which he intends to pay back at \$200 per month. (Ex. B) On February 1, 2009, Applicant and his sister rented a townhome, which they share with her son. (Tr. 35, Ex. C) In order to save expenses, they entered into a two-year lease.

In January 2009, Applicant received written interrogatories about his finances. (Ex. 4) At that time, he stated he had no information about the \$242 (SOR ¶1.a) medical debt or the \$40 (SOR ¶1.b) medical debt that appear on his March 2008 CBR and January 2009 CBR. (Ex. 2) At the hearing, Applicant had no information about the two debts. (Tr. 50) He said he would contact the credit reporting agencies to dispute these debts. (Tr. 55) No documentation concerning disputing of the debts has been received.

In January 2009, Applicant completed a monthly budget. (Ex. 2). His budget included a \$500 monthly payment to Sallie Mae, \$200 to the Department of Education, and \$300 on his university account placed for collection. (Ex. 2) Applicant was not actually making payments on these obligations, but listed them because he "meant to start payments." (Tr. 87) Applicant's monthly income after taxes and his child support deduction is approximately \$3,600 and his monthly expenses are \$2,575 (Tr. 92), which leaves approximately \$500 in discretionary income after paying his \$500 per month Sallie Mae debt. (Tr. 93)

Applicant has \$300 in savings, \$3,200 in his checking account, and thought his 401(k) retirement plan might have a \$20,000 balance, but provided no documentation. (Tr. 96) He has never received financial counseling. (Tr. 98)

A summary of the SOR debts and their current status follows:

	Creditor	Amount	Current Status
a	Account from medical provider placed for collection.	\$242	Unpaid. Applicant denies this debt which appears in his March 2008 CBR and January 2009 CBR.
b	Account from medical provider placed for collection.	\$40	Unpaid. Applicant denies this debt which appears in his March 2008 CBR and January 2009 CBR.
c	Charged off credit card account.	\$4,527	Unpaid.
d	Collection agency attempting to collect for telephone service account.	\$395	Unpaid. Applicant denies this debt which appears in his March 2008 CBR and January 2009 CBR.
e	Collection agency attempting to collect for credit card account.	\$1,367	Unpaid. This is the same debt listed in SOR ¶ 1.p.
f	University account placed for collection.	\$4,903	Applicant made some payments (not further described in the record) on this debt.
g	Department of Education account placed for collection.	\$2,661	Unpaid.
h	Past due or delinquent Sallie Mae student loan of \$26,593.	\$726	Paying. Applicant has made \$500 payments in May 2009 and June 2009.
i	Past due or delinquent Sallie Mae student loan of \$19,315.	\$552	Paying. Applicant has made \$500 payments in May 2009 and June 2009.
j	Past due or delinquent Sallie Mae student loan of \$15,263.	\$375	Paying. Applicant has made \$500 payments in May 2009 and June 2009.
k	Past due or delinquent Sallie Mae student loan of \$3,855.	\$94	Paying. Applicant has made \$500 payments in May 2009 and June 2009.
l	Past due or delinquent Sallie Mae student loan of \$6,019	\$123	Paying. Applicant has made \$500 payments in May 2009 and June 2009.

m	Past due or delinquent Sallie Mae student loan of \$17,174	\$623	Paying. Applicant has made \$500 payments in May 2009 and June 2009.
n	Credit card judgment.	\$1,068	Unpaid judgment.
o	Credit card judgment.	\$2,593	Unpaid judgment.
p	Charged off credit card account.	\$1,102	Unpaid. This is the same debt listed in SOR ¶ 1e.
q	Educational loan placed for collection.	\$26,603	Unpaid.
	Total debt listed in SOR	\$47,994	This amount includes \$2,493 in past due or delinquent in payments on the Sallie Mae student loans. The amount of the student loans as listed in his CBRs is \$88,219.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

Revised Adjudicative (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 that Applicant has a history of financial problems. The SOR lists two unpaid judgments and 15 accounts which were delinquent or placed for collection, which total approximately \$48,000. Applicant has six past due or delinquent Sallie Mae student loans. The amount past due or delinquent

was approximately \$2,500 on six loans totaling more than \$88,000. Since receiving the SOR, Applicant has made two payments of \$500 each on his delinquent student loans. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Since graduating from college in December 2005, Applicant has been employed full-time. He currently makes \$72,000 a year. Even though he has been employed for three and a half years, he has paid only \$1,000 on his student loan obligation and has made no payments on his two unpaid judgments and nine additional past-due, charged-off, or collection accounts. These debts total in excess of \$45,000.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

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

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

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

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

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

AG ¶ 20(a) does not apply. Applicant's financial problems were mainly incurred during college which ended in December 2005. His delinquent, charged-off, and collection accounts are both recent and numerous. It is unlikely he will incur additional student loans, but the remainder of the SOR debts are credit card accounts and medical debts, which are the types of debt likely to recur.

AG ¶ 20(b) has some applicability. Following a personal injury, Applicant decided to go to college. The choice resulted in his son having to live with his ex-wife and a child support obligation commencing. Additionally, he was out of work four months following his injury. The injury and his son not being able to live with him were conditions beyond



his control. However, only \$1,000 has been paid on his debts and those payments were made recently.

AG ¶ 20(c) does not apply because Applicant has not received any financial counseling and with two months payments made on his student loans it is too soon to find there are clear indications that the problem is being resolved or is under control.

AG ¶ 20(d) applies only to Applicant's Fannie Mae student loans and then only partially applies because he has only recently made two month's worth of payments. If payments continue this would constitute a good-faith effort to repay overdue creditors or otherwise resolve the debts. This is not a long track record. He says he will continue to his payments. However, in January 2009, when Applicant completed a monthly budget he indicated he was paying three student loans when in fact he was merely intending to pay and was not actually making payment.

The Appeal Board has addressed "meaningful track record" 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).

AG ¶ 20(e) does not apply. Applicant denied three of the SOR debts (SOR ¶ 1.a, \$242, SOR ¶ 1.b, \$40, and SOR ¶ 1.d, \$395), which total less than \$700. However, he has not contacted the creditors concerning these debts nor challenged them with the credit reporting agencies. They appear on his CBRs. Additionally, Applicant has failed to establish the educational loan corporation debt (SOR ¶ 1.q, \$26,603) is a part of his consolidated Sallie Mae student loans. Applicant has failed to establish there is a

reasonable basis to dispute the legitimacy of the past-due debts nor has he provided any documented proof to substantiate the basis of the 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The majority of the debt was student loans, which is a proper investment in one's future.

Applicant has recently started to make payments on his Sallie Mae student loans. The amount delinquent or past due on the Sallie Mae loans was approximately \$2,500. The total amount of the loans was in excess of \$88,000. Of course, the issue is not simply whether all his debts are paid or are being paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) He has paid \$1,000 on his student loans. However, he owes more than \$45,000 in other delinquent debt on which he has made no payments. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a

security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	Against APPLICANT
Subparagraph 1.a—1.g:	Against Applicant
Subparagraph 1.h—1.m:	For Applicant
Subparagraph 1.n—1.q:	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