



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



In the matter of: )  
)  
) ISCR Case No. 09-01010  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: Krystal M. Limon, Esquire

April 29, 2011

**Decision**

MASON, Paul J., Administrative Judge:

Even though eight of Applicant’s nine accounts became delinquent in a three month period in 2005, Applicant has done almost nothing to address the listed indebtedness. In addition, he has suspended his repayment plans until after he receives a decision on his security clearance. Applicant’s favorable character evidence in the military and at his current position do not successfully mitigate his financial problems. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on May 30, 2008. On April 30, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F).

The action was taken under 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on June 4, 2010. DOHA issued a Notice of Hearing on September 14, 2010, for a hearing on October 7, 2010. The hearing was held as scheduled. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence (without objection) in support of the Government's case. Applicant testified. His 14 exhibits (AE A through AE N) were admitted without objection. DOHA received the transcript (Tr.) on October 15, 2010. The record closed on October 15, 2010.

### **Findings of Fact**

The SOR alleges security concerns raised under the financial considerations guideline. The nine financial allegations, which total approximately \$87,728, identify eight credit card account and one medical account. In his Answer, Applicant denied SOR 1.a and 1.b, however, with no documentation from the creditor or one of the credit agencies showing that the accounts do not belong to him, the two accounts remain his responsibility. Except for SOR 1.f (medical account), he denied the remaining allegations as being factually incorrect. Applicant denied SOR 1.h urging that the account belongs to his wife. (Tr. 52) Without additional documentation supporting his claim regarding this account and the remaining accounts in the SOR, SOR 1.a, 1.b, 1.c, 1.d, 1.e, 1.g, 1.h., and 1.i, remain his responsibility. His claim of satisfying SOR 1.f (medical account) is corroborated by documentation (AE I; Tr. 50). SOR 1.f is resolved in Applicant's favor.

Applicant is 42 years old. He married his wife in August 1998. He has four children whose ages range from four to ten. Applicant has been working as an avionics technician at the same job location since October 2006. A new defense contractor assumed the contract in February 2009. (Tr. 27)

### **Military and Employment History**

Applicant joined the U.S. Air Force in June 1986 after graduating from high school. He trained in missile maintenance and graduated in June 1987, at the top of his class. He was granted a security clearance in August 1987. Applicant participated in additional training to become a master missile technician in 1989. While there, he received a leadership award in 1990. He also earned 47 hours toward his degree in electronics. He received an honorable discharge in December 1990. After a few months he entered the Air National Guard to become an avionics technician. (AE F)

Applicant received additional avionics training from June 1992 until February 1993, and again graduated at the top of his class. After a few months, he found an Air Guard position and also began working at a security company where he was promoted. Applicant was selected for additional avionics training which he completed in 1999. He also received two awards for exemplary scholarship during training. (*Id.*)

In August 1999, Applicant's unit was ordered to take mandatory anthrax vaccination. Applicant suffered a severe reaction to the vaccine, and unsuccessfully sought an exemption from additional inoculations by the Air National Guard base commander. In February 2000, the commander allowed Applicant to resign with an honorable discharge.

In February 2000, Applicant began working at a telecommunications company. In February 2005, he found a job in his field and moved to another location where he worked as an electrician until September 2005, when he was laid off. In the next three months he was unemployed, and the listed accounts became delinquent because he did not have the funds to pay them. (Tr. 75) In November 2005, he resumed employment as an electronics technician.

In September 2006, Applicant's employer sold his business, and Applicant was unemployed until late October 2006, when he was hired at his present location. In July 2008, Applicant was reassigned by his employer to the current satellite location, where he earns extra money. (AE F)

### **Applicant's Actions to Resolve SOR Accounts**

Applicant indicated that when he resumed employment in 2005, he contacted a financial counseling firm, but stopped his relationship with them after six months. No additional information was provided. Then, he contacted a debt consolidation firm who, instead of consolidating his debt, stole his money. (Tr. 90) They were sued by a several individuals for not delivering unidentified debt consolidation services. (Tr. 77)

In August and October 2008, Applicant was interviewed by investigators from the Office of Personnel Management (OPM) about his delinquent debt. (Tr. 85) Applicant attended 13 weeks of financial counseling in 2008 where he learned how to make a budget, save money, and pay off debts. (AE B; Tr. 77-79) The financial counseling taught him to pay off one delinquent debt at a time. By the end of 2009, using the saving methodology for paying delinquent debts provided by the financial counseling, Applicant saved approximately \$5,000 to pay off a debt. He had to use \$3,000 to move his family to his employer's headquarters.<sup>1</sup>

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<sup>1</sup> AE C reflects moving expenses of \$3,600 for 2010, but no expenses for 2009.

Applicant currently has \$9,700 to pay one of the listed creditors. (AE H) He has not tried to settle the listed account because he is afraid he could lose his security clearance. He stated:

I would have [settled the account], except for the fact that I was afraid that if I do lose my clearance, that I will immediately lose my job, and I will have no money for my family to live on. So, I was waiting to find out the decision, and once I get a decision then I will be able to continue with my original plan. (Tr. 81)

According to one of the financial counseling principles Applicant learned in 2008, providing food and shelter for the family is the first priority. (Tr. 81). Paying the credit card debt is last on the list to be addressed, although a budget should leave a remainder to apply to debt. (*Id.*)

As the credit bureau reports show, except for SOR 1.f, the listed debts became delinquent in September 2005. In an effort to raise money to pay off the listed debts and other unlisted debts, Applicant sold his home in June 2005, but recognized no gain on the sale. (Tr. 63) Applicant liquidated other possessions, but could not keep the listed accounts current. (Tr. 40, 75) He indicated, “the combination of losing my wife[’]s income, the medical bills from her pregnancies, home repairs, and the lack of training on how to live on a budget, caused me to get behind the curve financially.” (GE 2 at 69)

In attachments to his interrogatory answers dated December 22, 2009, Applicant provided copies of letters he sent to the SOR creditors and credit agencies between October and December 2009. In those letters, Applicant requested: (1) proof of the debt, (2) an audit be conducted on the delinquent debt, and (3) tax documents related to the account be produced. In other letters to the credit agencies, he requested that the listed debts be researched to remove any errant entries, and that the applicable statute of limitations was in effect to make the debts uncollectible, and justifying removal of the debt from his credit report. Applicant claimed that based on the advice of a debt firm and a lawyer, he sent the letters to the creditors requesting information “to show that I at least had attempted to keep up with the debt and not just let it slide.” (Tr. 69) Applicant raised the statute of limitations so that he could seek a settlement with one creditor and not worry about being sued by the other listed creditors. (Tr. 82-83)

## **Character Evidence**

Six character statements were furnished in Applicant’s behalf. A coworker since 1993 described Applicant as a self-starter who needed little supervision. (AE A) Witness E hired Applicant in October 2006. He believes Applicant is a skilled employee who has the

expertise to solve problems in an efficient and professional manner. Witness K, who has been Applicant's coworker since the Fall of 2006, considers Applicant a diligent worker. Witness L has known Applicant since July 2008. In view of Applicant's outstanding job performance, Witness L does not see why his financial issues should hinder his chances of receiving a security clearance. Witness M has known Applicant since July 2008, and believes he will do what is necessary to ensure the job is performed correctly. Applicant received a letter of commendation for eliminating an unsafe situation at his work station. (AE N; Tr. 26)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the whole-person concept that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

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.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth in AG ¶ 18:

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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of not meeting financial obligations*).

In approximately September 2005, Applicant was unable to maintain a current payment status on eight of nine debts, and they became delinquent. An SOR listing the nine accounts totaling \$87,728, was mailed to Applicant on April 30, 2010. The total indebtedness is reduced by \$53 with the documented satisfaction of SOR 1.f in May 2008. At the present time, Applicant still owes \$87,675 to eight creditors. AG ¶¶ 19(a) and 19(c) apply.

Five conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

AG ¶ 20(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*);

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*);

AG ¶ 20(c) (*the persona has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*);

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); and

AG ¶ 20(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 to resolve the issue*).

AG ¶ 20(a) does not apply. Though the financial problems occurred more than five years ago, the number of delinquent credit card accounts occurred under circumstances that could recur. Resolving only one small debt in five years continues to raise uncertainty about whether Applicant is truly committed to resolving the remaining debts. This doubt is aggravated by Applicant's conditional position of addressing the debts after he receives a decision regarding his security clearance.

AG ¶ 20(b) is partially applicable. Applicant's financial stability was strained by his unemployment for different periods in 2005 and 2006. However, he has been working full time at his present job since October 2006, and has not acted responsibly in that time to address the listed accounts. In addition, Applicant has provided inconsistent positions about his intentions of repaying the debts. The documentation he sent out to the creditors and collection agencies between October and December 2009 provides a strong suggestion he was doing more than simply letting the creditors know he was monitoring the debt while seeking information about the accuracy of the delinquent accounts.

Because there are no clear indications that Applicant's financial problems are under control, AG ¶ 20(c) has minimal applicability to Applicant's case in mitigation. He testified persuasively about the positive impact that the 13-week financial counseling had on his financial practices. He created a budget and started a savings account. But while he claims the financial counseling enabled him to structure a plan to repay the delinquent debts, the only debt resolved is SOR 1.f, which was satisfied in May 2008. On balance, Applicant's successful completion of the financial counseling entitles him to minimal mitigation under AG ¶ 20(c).

Except for SOR 1.f, the record fails to show a good-faith effort by Applicant to repay the listed delinquent accounts. Applicant's saving of money in a savings account and his conditional willingness to repay his delinquent debt does not qualify as a good-faith effort to repay overdue creditors. AG ¶ 20(d) does not apply.

Applicant filed several letters to the listed creditors and credit agencies. There is no evidence from any of the credit agencies that the disputed debts were removed from Applicant's credit report because the accounts were not his responsibility. The fact that most of the listed creditors do not appear on his updated credit report September 29, 2010, does not mean he no longer owes the underlying debt. AG 20(e) does not apply. Applicant's favorable job performance evidence, and his evidence in mitigation under AG ¶¶ 20(b) and 20(c) does not overcome the adverse evidence under AG ¶¶ 19(a) and 19(c).

### **Whole-Person Concept**

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have

also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

The record reflects that Applicant joined the Air Force in 1986 right after high school. In June 1987, he graduated at the top in his class in missile maintenance. He attended additional training to become a master missile technician in 1989, and received a coveted leadership award while earning 47 hours in electronics. After a few months away from the service, he joined the Air National Guard to become an avionics technician. He completed additional avionics training in 1992, and received awards for his training performance in 1999. In February 2000, Applicant received an honorable discharge from the Air National Guard. Between 2000 and February 2005, he worked for a telecommunications company before returning to his field of avionics. However, until October 2006, the jobs were short-lived and there were periods of unemployment.

The listed accounts in the SOR were caused by up to three months of unemployment in September 2005. He maintains he simply ran out of money and could not repay the debt.

Applicant has been employed consistently since October 2006. He was placed on notice in August and October 2008 that his debts were a security concern to the Government. The second notification by the Government came in December 2009 when Applicant was asked what specific action he had taken with respect to the individual accounts listed in the SOR. The documentation Applicant provided in response to the interrogatories does not show an effort to repay the debts. Rather, it suggests Applicant was demanding the debts be removed because of the relevant statute of limitations.

At the hearing, Applicant's position is that he is not going to pay the debts until he gets decision on his security clearance. Applicant's understanding of the security clearance hearing process demonstrates poor judgment. Under the Directive, the purpose of the hearing is to determine whether an applicant has the qualifications to possess a security clearance. Demonstrating qualifications under the financial guideline includes corroborating evidence demonstrating that an applicant has taken credible steps to restore control over



his financial delinquencies. Applicant knew about the delinquent debt in 2005 when he engaged a debt firm to address the indebtedness. He was advised by the Government in August and October 2008, and December 2009, that his delinquent debts were a security concern to the Government. Applicant's limited efforts to satisfy the delinquent accounts and favorable character evidence are not sufficient to mitigate the negative evidence under the financial guideline.

### **Formal Findings**

Paragraph 1 (Guideline F):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason  
Administrative Judge