



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



In the matter of:)	
)	
)	ISCR Case No. 09-04188
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

September 29, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has six unpaid accounts placed for collection or charged off totaling about \$31,000. Applicant has failed to rebut or mitigate the security concerns under financial considerations. Clearance is denied.

Statement of the Case

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

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Statement of Reasons (SOR) on September 24, 2009, detailing security concerns under financial considerations.

On November 18, 2009, Applicant answered the SOR and requested a hearing. On June 7, 2010, I was assigned the case. On June 7, 2010, DOHA issued a Notice of Hearing for the hearing held on June 28, 2010. At the hearing, the Government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified on his own behalf and submitted Exhibit A, which was admitted into evidence without objection. The record was held open to allow additional information from Applicant. No additional material was submitted. On July 7, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in ¶ 1.b and 1.i of the SOR. He admitted the remaining factual allegations, with explanations. He also provided additional information to support his request for eligibility for a security clearance. 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 33-year-old software engineer who has worked for a defense contractor since October 2008, and is seeking to obtain a security clearance. Applicant was in the United States Air Force from February 1997 through August 1999. (Ex. 4, DD Form 214) Applicant asserted he left the Air Force in August 2001. (Tr. 34) After leaving the Air Force, Applicant was unsuccessful in his attempt to become an insurance agent, and returned to the information technology field. (Ex. 1) Before obtaining his current job, Applicant was a software consultant working on projects routinely lasting three to four months. (Tr. 35) As a consultant he was paid \$75 per hour. (Tr. 36) Applicant was unemployed from February 2002 through August 2002; May 2004 through July 2004; June 2007 through November 2007; and from June 2008 through August 2008. (Ex. 1)

In July 2009², Applicant enrolled with a company specializing in credit and debt counseling, credit restoration, and credit score rebuilding. The company was working to resolve five derogatory accounts listed in the SOR. Those debts were: \$53 (SOR ¶ 1.d); \$8,930 (SOR ¶ 1.d), \$12,986 (SOR ¶ 1.h); \$1,810 (SOR ¶ 1.i); and, \$538 (SOR ¶ 1.j). Ex. 4) The service agreement required a \$250 initial set-up fee and \$65 monthly service fee for work performed. There is an indication the initial set-up fee and the monthly service fee would be automatically deducted from Applicant's debit card. (Ex. 4) Applicant asserts, but did not document, that the monthly charge is being debited from

² There is a March 2009 letter from the company indicating they were currently working on resolution on accounts with eight creditors. (Ex. 4) However, the service agreement with this company was signed in July 2009.

his account. (Tr. 23) He asserted he had paid the company approximately \$1,200. (Tr. 29)

Applicant failed to show what the company has done to address his delinquent accounts. He believes their method is to send out letters to the creditors regarding discrepancies on his CBR and attempt to negotiate settlements on his debts. (Tr. 28) He stated, "I couldn't tell you the details of what they do." (Tr. 27) Two accounts have been removed from his CBR. The record was kept open for Applicant to provide the company's current actions to address his delinquent accounts. (Tr. 30) No documents were received.

In 1997, Applicant asserted he settled a \$1,810 credit card debt (SOR ¶ 1.i) prior to joining the Air Force. (Tr. 38) The account had been opened in January 1996. (Ex. 2) Applicant's March 2009 credit bureau report (CBR) lists the account as having been 180 days past due before being charged off. This debt was disputed and deleted from Applicant's August 2009 CBR. (Applicant's answer to SOR)

In January 2005, Applicant obtained numerous student loans for college. He incurred a \$5,613 (SOR ¶ 1.a) tuition fee owed directly to the college. As of March 2009, the loan was past due in the amount of \$7,484. (Ex. 2) Applicant received several checks from the Department of Veteran's Affairs (VA) through the G.I. Bill program (Tr. 24), which totaled \$19,000 or \$20,000. (Ex. 3) Applicant assumed the VA had paid his college tuition directly. Instead of using the checks to pay his tuition, he used the money for living expenses. Almost immediately after enrolling in college, he obtained a full-time job and failed to dis-enroll from college. (Ex. 3) Applicant asserted his college tuition debt is the same obligation as the VA debt. (Tr. 25) He was asked to provide documentation that the two debts were the same obligation. (Tr. 45) He failed to document that the debts were the same obligation.

Since 2005, Applicant's federal income tax refunds were intercepted and applied to his VA loan debt. Applicant's March 2009 CBR also lists five Sallie Mae student loans with a zero balance. (Ex. 2) As of May 2009, Applicant had repaid his VA education indebtedness (\$2,426.08). (Applicant's answer to the SOR) A VA debt was also challenged and deleted from Applicant's March 2009 CBR.

The SOR lists two state higher education accounts placed for collection (\$689, SOR ¶ 1.f and \$459, SOR ¶ 1.g). In November 2009, Applicant made a \$463 payment to the state higher education account. (Applicant's answer to SOR) Applicant asserted both accounts have been paid. (Tr. 33) He was asked to provide documentation supporting payment of each debt. No documents were received. Applicant's May 2010 CBR does list the two accounts as paid collection accounts with a zero balance. (Ex. 6)

Applicant incurred two debts with the same creditor: \$8,930 for a credit card account charged off (SOR ¶ 1.e) and \$12,989 for a repossessed vehicle (SOR ¶ 1.h).

Both accounts were opened in August 2005. Due to unemployment Applicant was unable to repay his auto loan as agreed. Applicant had three cars before going through several lay-offs. He voluntarily returned one car to the creditor so he could stay current on the other two cars. In his April 2009 interview, Applicant stated he owed approximately \$8,000 on the credit card and was past due on the account. At that time, April 2009, he had not contacted the creditor, but did plan to pay the debt and it was "one of his next priorities to pay off." (Ex. 3) He stated it was his intent to contact the creditor and negotiate a repayment plan. (Ex. 3)

Applicant's August 2009 Personal Financial Statement (PFS) lists monthly payments of \$312 on the vehicle repossession and \$90 on the credit card repayment. (Ex. 4) Applicant failed to document he made any payment on these two debts. At the hearing, he asserted these accounts were being handled by the debt resolution service. (Tr. 32)

Applicant incurred a \$578 electric bill (SOR ¶ 1.c) Applicant moved from one location to another. After vacating the apartment, the new tenants did not transfer the electrical service account to their name. Applicant did not see why he needed to pay for service when he no longer lived at that address. (Applicant's answer to SOR) Applicant asserted the debt had been paid and he would provide documentation. (Tr. 32) No documents were received.

Applicant denies making purchases at a hobby store and incurring a \$665 debt (SOR ¶ 1.b). He asserted this debt was included in those with the debt resolution service. (Tr. 26) However, the company's March 2009 letter (Ex. 4) fails to list either the original creditor or the collection firm as an account the service was attempting to resolve.

Applicant incurred a \$53 debt (SOR ¶ 1.d) as the result of a returned check. (Ex. 6) The debt is listed in Applicant's May 2010 CBR as paid with a zero balance. (Ex. 6) At the hearing, Applicant stated it was paid and he had documentation showing it was paid. (Tr. 32) No documents were received.

As of April 2009, Applicant's monthly income was approximately \$6,700 and his monthly expenses were approximately \$3,600. (Ex. 3) As of August 2009, his net monthly income was approximately \$6,640, his total monthly expenses were \$2,500, and his net monthly remainder was approximately \$3,700. (Ex. 4) In At the hearing, Applicant said his yearly income had increased. (Tr. 42)

In December 2009, Applicant obtained a \$281,000 mortgage. (Tr. 39) He is current on his \$2,100 monthly mortgage payments. (Ex. A, Tr. 40) In February or March 2010, Applicant purchased a 2005 Nissan for \$16,000. He is current on the \$403 monthly payments. (Tr. 40) He pays \$900 monthly for his daughter's private school

tuition. (Tr. 41) Applicant has been married since December 1997. He has four children ages 1, 3, 8, and 12. His wife does not work outside the home. (Tr. 37)

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

	Creditor	Amount	Current Status
a.	Account placed for collection for college tuition.	\$7,484	Unpaid. Applicant paid his VA student loan, but failed to document this debt and the VA debt were the same obligation.
b.	Account placed for collection.	\$665	Unpaid. Applicant has no information about this debt. (Tr. 26) Applicant asserted this debt was being handled by the debt resolution service, but is not listed as an account the service is attempting to resolve. (Ex. 4)
c.	Collect for an electrical utility account.	\$578	Unpaid. Applicant asserted the debt had been paid, but failed to provide any documentation.
d.	Account placed for returned check.	\$53	Paid. (Ex. 6)
e.	A charged-off credit card account.	\$8,930	Unpaid. this debt was being handled by the debt resolution service, but there is no showing what action, if any, the service has taken concerning this debt.
f.	State higher education account placed for collection.	\$689	Paid. Applicant's May 2010 CBR lists this as a paid collection account with a zero balance. (Ex. 6)
g.	State higher education account placed for collection.	\$459	Paid. See item f. above.
h.	Vehicle repossession debt.	\$12,986	Unpaid. This debt was being handled by the debt resolution service, but there is no showing what action, if any, the service has taken concerning this debt.

	Creditor	Amount	Current Status
i	Discover account charged off.	\$1,810	Deleted from Applicant's August 2009 CBR.
j	Account placed for collection.	\$538	Unpaid. This debt was being handled by the debt resolution service, but there is no showing what action, if any, the service has taken concerning this debt.
	Total debt listed in SOR	\$34,201	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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 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

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 to meet his financial obligations.

Applicant has a history of financial problems. Applicant had ten charge-off or accounts placed for collection, which totaled approximately \$34,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Although Applicant was informed he need to provide documentation establishing he had paid, was paying, had established repayment plans, or had successfully disputed debts, no documents were received. Six accounts, which are past due, charged off, or placed for collection, have not been paid.

Applicant's conduct does not warrant full application of any mitigating conditions because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are a continuing course of conduct. Applicant does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." There is doubt about whether Applicant is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so.

AG ¶ 20(b) has limited applicability. Applicant was unemployed seven months in 2002, three months in 2004, six months in 2007, and three months in 2008. Unemployment is a condition largely beyond the person's control. Applicant has been employed full time since October 2008. As of April 2009, his monthly income was approximately \$6,700 and his monthly expenses were approximately \$3,600. As of August 2009, his net monthly income was approximately the same and his total monthly expenses were \$1,000 less. His net monthly remainder was approximately \$3,700. Applicant has had sufficient income to address some of this debt.

AG ¶ 20(c) does not apply. Six of his debts remain unaddressed. He contracted with a debt resolution service to assist him with his debts, but he has only limited awareness of what the service has done on his behalf. The service wrote letters disputing the debts and two debts were removed from his recent CBR. However, Applicant admits incurring four of his unpaid accounts. He admitted the \$8,930 credit card debt (SOR ¶ 1.e), the \$12,986 repossession (SOR ¶ 1.h), the \$578 electrical utility bill (SOR ¶ 1.c), and that he incurred a tuition bill (SOR ¶ 1.a). He disputed the remaining two debts (\$665, SOR ¶ 1.b and \$538, SOR ¶ 1.j).

Mitigation under AG ¶ 20(d) applies only to the two state higher education loans and the returned check collection account, which have been paid.

Mitigation under AG ¶ 20(e) applies only to the \$1,810 credit card debt (SOR ¶ 1.i). He asserted he paid the debt before joining the Air Force in 1997. The debt was challenged and removed from his CBR. AG ¶ 20(e) does not apply to the two other debts he is disputing. Merely stating he does not owe the debt is insufficient. He must have a reasonable basis to dispute the legitimacy of the past-due debt and provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. He has failed to provide any documentation.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He has not provided documentation

showing sufficient progress on his SOR debts. His actions are simply inadequate to fully mitigate financial considerations security concerns.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant said he had documentation showing certain debts had been paid and the debt resolution service was acting on his behalf to resolve the remaining debts. He has documented that one debt (\$1,810) was deleted from his CBR and that three debts (\$53, \$459, and \$689) were paid. This addresses \$3,000 of the \$34,000 in delinquent debt. Six debts totaling approximately \$31,000 have yet to be addressed.

Overall, the record evidence leaves me with questions and doubts about 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.

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.c: **Against Applicant**

Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f – 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge