



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06611
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: Cheryl L. Meadows, Personal Representative

April 5, 2011

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$52,000 on an unpaid judgment and 13 charged-off or placed-for-collection accounts. Applicant has paid three of the debts, which total approximately \$14,000. He 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,<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 (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 July 8, 2010, detailing security concerns under Guideline F, financial considerations.

On August 16, 2010, Applicant answered the SOR and requested a hearing. On November 15, 2010, I was assigned the case. On November 18, 2010, DOHA issued a Notice of Hearing for the hearing held on December 1, 2010.

The Government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through E, which were admitted into evidence without objection. The record was kept open to allow Applicant to submit additional documents. (Tr. 20) No documents were received. On December 8, 2010, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's SOR Answer, he admitted the factual allegations in SOR ¶¶ 1.b, 1.c, 1.d, 1.k, and 1.l. He denied the remaining allegations. He admits to owing five debts, which total approximately \$29,000 and denying nine debts, which total approximately \$33,000. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 46-year-old over-the-road truck driver who has worked for a defense contractor since August 2008, and is seeking to obtain a security clearance. Applicant called no witnesses other than himself, and produced no work or character references. He has been married since 1995 and has no children. (Tr. 36)

Both Applicant and his wife are truck drivers with a combined annual salary of \$80,000.<sup>2</sup> (Tr. 38) They are away from home 80 percent of the year. (Tr. 37) As an over-the-road trucker, Applicant finds it difficult to locate paperwork related to some of the SOR debts. (Tr. 34) He does not have access to material he needs, which has led to the amount of time he has taken to address some of this debt. (Tr. 34)

Applicant was working for a custom home builder when downsizing led to his unemployment in 2005 or 2006. (Tr.31, 39) His annual salary was \$45,000 plus a bonus of \$1,000 or \$2,000 for each house completed. (Tr. 39) In mid-2006, he and his wife then attempted self-employment delivering auto parts. (Tr. 31) The work was not financially successful and ended after two or three months with a loss of \$7,000 to \$8,000. (Tr. 41) When the auto parts delivery job failed to work out, they started to deliver fifth-wheeled vehicles, which lasted until June 2008. (Tr. 42) He grossed \$40,000 to \$50,000 annually, but netted much less due to fuel costs and other expenses. (Tr. 43) From 2006 to 2007, his wife, who sold homes, was also unemployed. (Tr. 44)

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<sup>2</sup> Prior to 2001, when Applicant was building homes and his wife was selling homes, their combined yearly income exceeded \$80,000. (Tr. 61)

In 2008, Applicant and his wife attended a six-week school to obtain their commercial driver's license (CDL). Following school, they were to work for an over-the-road commercial trucking firm for 18 months. However, the low pay of \$600 weekly forced them to quit after one or two months. (Ex.2) Had they worked the entire period for the company, the school debt would have been forgiven. (Tr. 43) The balance owed on the school debt is \$5,833 (SOR ¶ 1.c). The original debt was \$4,000. (Tr. 51) He admitted this debt in his SOR answer.

In the mid-2000s, Applicant had a telephone service account. He asserts he completed his contract with the carrier and cancelled his service, but the carrier put him on a new contract and charged him \$796 (SOR ¶ 1.h) for early termination of that new contract. (Tr. 82) He has been disputing this debt since 2005. (Tr. 82) He disputed it with the company, but the company claimed it was a valid debt. (Tr. 55) He disputed it with the credit bureau six months ago, but has not received the results of his challenge to the debt. (Tr. 55)

In the mid-2000s, Applicant obtained a \$3,000 loan (SOR ¶ 1.n) for dental work. He was unable to continue his monthly payments. In June 2009, Applicant was interviewed about his finances in a personal subject interview. (Ex. 2) At that time, he intended to set up a repayment agreement on this debt. (Ex. 2)

In 2005, Applicant co-signed on the purchase of his wife's car. In 2006, they both became unemployed and the vehicle was voluntarily repossessed. The vehicle was sold and Applicant admits owing some amount following the sale, but disputed owing \$8,867 (SOR ¶ 1.k). The creditor offered to settle the debt for \$2,864, which Applicant accepted and paid. (Ex. D)

In 2001, Applicant purchased a \$22,000 camper and financed it. (Tr. 58) In 2005 or 2006 when he became unemployed, he could no longer afford to make payments. In 2007, the camper was repossessed and sold. (Tr. 58) He has not made any payments on the debt and has not had any recent contact with the creditor. The \$13,841 account (SOR ¶ 1.l) was charged off.

During the 2009 interview, Applicant had no knowledge about the \$4,366 judgment or creditor listed in SOR ¶ 1.a (\$4,366). He learned of the judgment a few months after it was entered. (Tr. 46) He does not know the nature of the debt causing the judgment. (Tr. 47) The debt remains unpaid.

Applicant acknowledged owing some amount to the creditor on the \$5,355 credit card account placed for collection (SOR ¶ 1.f). His interest rate went from 9.9% to 23%. (Tr. 80) He asserted he disputed this debt. At the personal interview, he did not recognize the \$279 medical debt (SOR ¶ 1.m) or the \$135 medical debt (SOR ¶ 1.d). At the hearing, he stated at the time he injured his knee, he had health insurance and was unaware there was an outstanding amount owed for medical treatment. In his SOR answer, he admitted the \$135 medical bill which was for an injury in 2007. (Tr. 76)

Applicant disputes the \$4,861 charged-off credit card debt (SOR ¶ 1.e). He never had a credit card with this company. He alleged he had disputed the debt with the credit bureau. He provided no documentation supporting any dispute.

Applicant has paid the \$582 charged-off debt listed in SOR ¶ 1.g. (Ex. C) He owed \$4,433 on a bank account, which had been placed for collection (SOR ¶ 1.i). The creditor offered to settle the matter for \$664, which Applicant paid. (Ex. E) He had other past-due accounts (not alleged in the SOR) which were settled and paid. One clothing store creditor agreed to settle a \$296 debt for \$88 and another creditor agreed to settle a \$2,784 electronics store account for \$835. Applicant accepted and paid both offers. (Ex. A-1, A-2) He asserts a \$150 department store account was settled for 30% of the amount owed. (Ex. B)

Applicant's intent is to pay his debts. He is saving between \$400 and \$2,000 each month to address his delinquent accounts. (Tr. 60) Because the household income can vary greatly each month, saving and then making a payoff is better than attempting to make regular monthly payments on delinquent accounts. (Tr. 70) He has received no financial counseling. (Tr. 61) In 2004, he purchased a new vehicle. He is current on his \$696 monthly payments and has eight remaining payments. (Tr. 63) He and his wife are current on their \$2,400 monthly truck lease and on the insurance, maintenance, and fuel for the truck. (Tr. 68)

At the hearing, Applicant was informed that he not only had to have reasonable cause to dispute a debt, but had to document his dispute. (Tr., 83) He was told he needed to document the validity of his claims.

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	Judgment.	\$4,366	Unpaid.
b	Medical account incurred when Applicant injured his knee.	\$249	Unpaid. Applicant admits owing this debt and contacted his insurance company regarding it. (Tr. 49)
c	School debt to obtain Applicant's CDL.	\$5,833	Unpaid.
d	Hospital collection account.	\$135	Unpaid. He has made no effort to determine the nature of the debt. (Tr. 51)
e	Charged-off credit card account.	\$4,861	Applicant disputes this debt asserting he never had a credit card with this company. (Tr. 52) He provided no supporting documentation.

	Creditor	Amount	Current Status
f	Credit card account placed for collection.	\$5,355	Unpaid. Applicant does not dispute owing this creditor, but disputes the amount being claimed. He provided no documentation supporting his contesting of the debt with the credit bureau. (Tr. 54)
g	Credit Union account charged off.	\$582	Paid. (Ex. C)
h	Collection agency collecting for a telephone company account.	\$796	Applicant disputes this debt. He asserts he was charged a cancellation fee after he closed the account.
i	Collection agency collecting for a bank account.	\$4,433	Settled and paid. (Ex. E)
j	Collection agency collecting for a telephone company account.	\$170	Applicant disputes this debt. He asserts he was charged a cancellation fee after turning in his telephone. He failed to document any dispute. (Tr. 56)
k	Repossessed vehicle account charged off.	\$8,867	Settled and paid. (Ex. D)
l	Repossessed camper account charged off.	\$13,841	Unpaid.
m	Medical debt incurred when he hurt his knee.	\$279	Applicant disputes this debt. He is talking to his health insurance provider about this debt. (Tr. 59)
n	Collection agency collecting for a collection account.	\$3,000	This is a duplication of the debt listed in SOR ¶ 1.i, which was settled and paid. (Ex. E, Tr. 86)
	Total debt listed in SOR	\$52,767	

### 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 of 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 of 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 one judgment and 13 charged-off accounts or accounts placed for collection, which totaled approximately \$52,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 conduct does not warrant fully application of AG ¶ 20(a) or AG ¶ 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debts. Because of the number of debts, his financial problems are not isolated. A large number of the debts remain unpaid, and, therefore, is a continuing course of conduct.

The mitigating conditions listed in AG ¶ 20(b) only partially apply. Applicant and his wife were both unemployed, followed by attempts at self-employment, which were financially unsuccessful. The periods of unemployment and reduced earnings are factors beyond his control. However, he must also show he has acted responsibly under the circumstances. He and his wife's annual combined income is approximately \$80,000. After obtaining his full time job approximately two-and-one-half years ago and being informed of the Government's concern about his delinquent accounts in 1999, he has paid approximately \$5,000 on the SOR debts. This does not show an aggressive approach to addressing his delinquent accounts.

The mitigating conditions listed in AG ¶ 20(c) do not apply. Applicant has received no financial counseling and more than \$35,000 of the debt has yet to be addressed.

The mitigating conditions listed in AG ¶ 20(d) apply to some of the SOR accounts. Applicant has paid approximately \$4,600 toward settling and paying two SOR debts (SOR ¶ 1.i, \$4,433 and 1.k, \$8,867) and three additional debts not referenced in the SOR. The delinquent accounts he settled and paid total approximately \$16,500. He also paid an additional charged-off account (SOR ¶ 1.g, \$585). Together these debts account for approximately \$17,000 of the \$52,000 in delinquent SOR debt. The mitigating conditions listed in AG ¶ 20(d) apply to these paid debts.

Applicant's ability to enter into monthly repayment plans is greatly hindered by the large variances that occur in his income from month-to-month. One month he may have sufficient income to make payments and the next month, with maintenance repairs and other expenses, his income may be sufficient only to meet his essentials. To address this problem, he asserts he is setting aside \$400 to \$2,000 per month to pay on his bills. However, he failed to show the money was being set aside or that payment was being made with this money.

The mitigating conditions listed in AG ¶ 20(e) do not apply. Applicant disputes one charged-off account (SOR ¶ 1.e, \$4,861) and three accounts placed for collection (SOR ¶ 1.h, \$796; SOR ¶ 1.j, \$170; and, SOR ¶ 1.m, \$279), but provided no documented proof to substantiate the basis of his dispute. At the hearing, he was informed that he needed to do more than merely contest these accounts. He was told documentation was required as to any dispute that the debt was not his or that the debt no longer existed. For the mitigating conditions in AG ¶ 20(e) to apply, there must be a dispute of the obligation and applicant must provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue, which he has failed to do.



Applicant also asserted that the \$3,000 account placed for collection (SOR ¶ 1.n) was a duplication of the account placed for collection (SOR ¶ 1.i, \$4,433) which he paid. However, he provided no documentation supporting his assertion.

There are some positive signs, such as him addressing approximately \$17,000 of the \$52,000 of delinquent debt and meeting his current daily living expenses and his intention to pay his debts. However, it is too early to conclude his financial problems are part of his past and will not recur.

### **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. Prior to 2001, Applicant and his wife's joint annual income exceeded \$80,000. In the mid-2000s, a downturn in the economy led to his unemployment in the home building industry and his wife's job of selling homes. Not until August 2008, did their joint annual income reach \$80,000. He has paid a portion of his debt, but a significant portion remains unaddressed.

The issue is not simply whether all his debts are paid—which they are not—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) At this time, he has too much outstanding debt for me to conclude his debt no longer constitutes a security concern. However, this decision should not be construed as a determination that Applicant cannot or will not attain the state of reform and rehabilitation necessary to justify the award of a security clearance in the future.

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 Applicant's current circumstances, a clearance is not recommended. Should 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.

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 he 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**

Subparagraphs 1.a–1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l and 1.m	Against Applicant
Subparagraph 1.n:	For 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