



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



In the matter of:)
)
) ISCR Case No. 09-06930
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 14 charged-off, placed for collection, or past-due accounts, which totaled \$15,000. 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 Statement of Reasons (SOR) on May 17, 2010, detailing security concerns under financial considerations.

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.

On June 26, 2010, Applicant answered the SOR and requested a hearing. On June 13, 2010, I was assigned the case. On July 30, 2010, DOHA issued a Notice of Hearing scheduling the hearing held on August 18, 2010.

The Government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified 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 received. On August 25, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the debt listed in ¶ 1.k and admitted the remaining debts, with explanations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 29-year-old mechanic who has worked for a defense contractor since June 2004, and is seeking to obtain a security clearance. Applicant's team leader and supervisor states Applicant is a vital asset to the program and has volunteered for extra training which makes him even more valuable. His supervisor has never questioned Applicant's integrity or ethics. (Ex. A)

In 2004, Applicant incurred expenses when he moved from another state to his present location. Applicant obtained student loans of \$23,000 to attend school from 2006 to 2007. (Tr. 43) The credit management corporation servicing Applicant's \$20,328 student loan obligation (SOR ¶ 1.j) determined Applicant should pay \$70 monthly. If he makes nine consecutive on-time monthly payments, he would qualify for the loan rehabilitation program. (Applicant's Answer to SOR) The \$70 monthly fee is debited directly from his pay. He asserts he has made two monthly payments on this debt, but provided no documents showing actual payment on his student loan. (Tr. 36)

The \$538 debt listed in SOR ¶ 1.l is for medical expenses incurred when Applicant's son was born in 2007. Applicant asserts his insurance should have covered all medical expenses. Applicant contacted the creditor requesting an explanation of the debt. (Tr. 36) He is waiting for a response from the creditor. (Tr. 36) During an August 2009 interview, Applicant could not recall this debt. (Ex. 5)

In April 2009, Applicant reported to his company's security office that he was more than 60 days past due on his credit cards, which totaled approximately \$58,000.² (Ex. 4) He had contacted his creditors in an attempt to establish repayment schedules on the debts. He was unsuccessful in his attempts to establish repayment schedules.

² It is uncertain what credit card accounts are included in this amount. The SOR alleges \$15,000 of delinquent debt.

In August 2009, Applicant was interviewed concerning his financial situation. He indicated that three years earlier he had become involved in a custody battle over his nine-year-old daughter, which cost him \$6,000 in attorney fees. (Ex. 5, Tr. 34) He was paying \$400 per week for his son's daycare. When his daughter visited him during the summers, he incurred an additional \$500 monthly expense for daycare, clothing, and other expenses. This was in addition to his \$420 monthly child support obligation. (Tr. 24) He is current on his child support obligation. (Tr. 25) In March 2008, he was not paid for one week due to a work-related accident. A month later, he was unpaid for three days following a tree-cutting accident.

In 2009, Applicant approached a credit counseling service to assist him in paying his delinquent debts. It was estimated it would take 49 months to pay off the \$13,505 Applicant owed. The agreement required him to pay the service \$533 monthly and was to start in September 2009. (Ex. 5) Applicant could not afford the monthly payments and therefore, never entered into the agreement. (Tr. 41)

In October 2009, Applicant stated he had paid off his car and would be entering into a consolidation repayment program. (Ex. 4) As of December 2009, it was Applicant's plan to pay off all the delinquent accounts under \$1,000 and then enter into a consolidation repayment program. (Ex. 5)

In May 2010, he signed a retainer agreement with a law firm, which would attempt to negotiate Applicant's unsecured debts for less than the full amount owed. (Applicant's Answer to SOR) The firm was to receive a \$100 initial fee and \$50 monthly administrative fee. Applicant agreed to pay the law firm 30% of the difference between the amount owed on the debt and the settlement amount on the debt. He agreed to make monthly payments of \$173 to the law firm. Some, but not all, of the SOR debts were included in his arrangement with the law firm. The law firm's debt schedule included the following debts: SOR ¶ 1.b (\$1,422), SOR ¶ 1.c (\$571), SOR ¶ 1.d (\$1,428), SOR ¶ 1.e (\$2,335), SOR ¶ 1.f (\$2,165), SOR ¶ 1.g (\$475), SOR ¶ 1.h (\$614), and SOR ¶ 1.i (\$2,434). The debt schedule also included a \$468 debt not listed in the SOR. Applicant asserted he had made his July and August 2010 payments, but provided no documentation establishing the payments. (Tr. 27) Applicant asserts the amount is taken automatically from his pay. (Tr. 29)

Applicant's base salary is \$42,000 per year. (Tr. 29) Except during the summer when his daughter visits him, Applicant works overtime³ six to seven days per week. (Tr. 29) His wife is a medical assistant with a \$27,000 annual salary. (Tr. 30) As of August 2009, Applicant's monthly gross income was \$5,166, his total monthly expenses were \$2,716, and his net monthly remainder was \$318. (Ex. 5) When Applicant's spouse's monthly net income of \$3,395 is included in the household's monthly budget, the household's net monthly remainder was \$543. The only credit card he has is a

³ Applicant states he works a minimum of 10 hours per week of overtime and a maximum of 70 hours overtime. (Tr. 46) His gross pay for 10 hours of overtime would be \$375. (Tr. 47)

company issued card. (Tr. 43) Six weeks before the hearing, Applicant purchased a 2008 Dodge pickup truck and is current on his \$410 monthly payments. (Tr. 46)

Applicant was informed he could provide documentation showing he was making his monthly student loan payments and the monthly payment to the law firm. (Tr. 44) No documents were received.

In August 2006, Applicant entered into a one-year apartment lease paying \$675 per month. (Tr. 47) In May 2007, Applicant broke his apartment lease because he found a house he wanted to buy. He purchased the house for \$69,000, which has a current fair market value of \$76,000. (Tr. 45) He is current on his \$697 monthly mortgage payments on his home. (Tr. 30, 45) When he broke the lease, he was responsible for the monthly rent until the apartment was re-rented and for damages done during his occupancy. Applicant believes he owes one month's rent (\$695) and \$200 for carpet damage. (Ex. 5, Tr. 39) The landlord is demanding \$3,966. (Tr. 48) Applicant does not know how this amount was determined. The creditor has not contacted him since May 2007. He intends to contact the creditor to request an itemized bill. (Tr. 39)

A summary of Applicant's charged-off, collection, and past-due accounts and their current status follows:

	Creditor	Amount	Current Status
a	Collection agency collecting for a delinquent cell phone account.	\$334	Unpaid. Debt incurred in 2004. (Tr. 31) Applicant intends to settle his debt. He contacted the creditor, but has yet to reach a repayment agreement. He hoped to pay the debt within the next three months. (Tr. 33)
b	Credit card charged-off account.	\$1,422	Creditor offered to settle for 75% of the debt, but Applicant could not pay that amount. It is included in the law firm's debt schedule. (Tr. 33)
c	Department store charged-off account.	\$571	It is included in the law firm's debt schedule. (Tr. 33)
d	Credit card charged-off account.	\$1,364	It is included in the law firm's debt schedule. (Tr. 33)
e	Charged-off jewelry store account.	\$2,334	Debt was incurred just prior Applicant's November 2007 wedding. (Tr. 35) It is included in the law firm's debt schedule.
f	Charged-off jewelry store account for the purchase of wedding rings.	\$2,165	Creditor offered to settle for \$1,624, which Applicant was unable to pay. It is included in the law firm's debt schedule.

	Creditor	Amount	Current Status
g	Collection agency attempting to collect on a delinquent gasoline credit card.	\$460	Creditor offered to settle for \$300, but Applicant could not pay that amount. It is included in the law firm's debt schedule.
h	Collection agency attempt to collect for a telephone account.	\$602	Debt was incurred in 2004. Creditor offered to settle for \$272, but Applicant could not pay that amount. It is included in the law firm's debt schedule.
i	A loan to fund Applicant's wedding. The account was 120 days past due.	\$347	It is included in the law firm's debt schedule.
j	Student loan obligation was 180 days past due.	\$553	Applicant asserts the monthly \$70 fee is debited directly from his pay. (Tr. 35)
k	Utility bill owing when Applicant vacated his rental apartment.	\$43	Paid. This debt was paid in May 2008. (Applicant's Answer to SOR)
l	Medical debt incurred at his son's birth.	\$528	Unpaid. Applicant has contacted the creditor and requested an explanation of the debt. Applicant is awaiting a response. (Tr. 36)
m	Collection account.	\$321	Unpaid. Applicant is still attempting to learn the nature of this debt. (Tr. 51) Applicant thinks he may have disputed this debt with the credit bureau. (Tr. 37)
n	Amount owed for broken lease.	\$3,966	Unpaid. He will continue his attempts to contact the creditor.
	Total debt listed in SOR	\$15,010	

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 14 charged-off, collection, or past-due accounts, which totaled approximately \$15,000. He paid a \$43 debt placed for collection, made two \$70 payments on his student loan obligation, and made two \$173 payments to a law firm. Six of Applicant's debts were at or under \$600 each and remain unpaid. 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.

In April 2009, Applicant went to his security office and informed them he was more than 60 days delinquent on his credit cards. It is to his credit that he was the one

who approached the security office to inform them of his financial problems. Since April 2009, he has made a total payment of less than \$600 on his delinquent debts.

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. The mitigating conditions listed in AG ¶ 20(a) do not apply. Some of debts were incurred in 2004 and others in 2007. However, the debts remain unpaid and are, therefore, considered recent. There are 14 delinquent accounts so they are not considered infrequent. Applicant's financial problems were contributed to by his child support obligations and the extra expenses incurred during his daughter's summer visits. There is nothing to indicate the debts were incurred under such circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

The mitigating conditions listed in AG ¶ 20(b) partially apply. Applicant incurred \$6,000 in legal fees during a custody dispute concerning his daughter. Additional expenses were incurred in 2004, when Applicant moved to his current location. The divorce, custody dispute, and moving expense were financial problems largely beyond Applicant's control. In March 2008, Applicant was not paid for one week and a month later, he was unpaid for three days following a tree-cutting accident. These unpaid days were also events beyond his control. But the move occurred six years ago and it has been two years since he was out of work for less than two weeks.

It is too soon to find the mitigating conditions listed in AG ¶ 20(c) and ¶ 20(d) apply. There has been no showing that Applicant has received credit counseling, or otherwise brought his delinquent debts under control. The evidence of Applicant's stated intentions to pay off his delinquent debts falls short of demonstrating a track record of financial reform and rehabilitation sufficient to permit the conclusion that Applicant's history of financial difficulties will be resolved soon and will not recur.

Applicant asserts he is paying his \$70 monthly student loan obligation and the \$173 payment to the law firm. However, he provided no documentation supporting his assertions. Without documentation showing his efforts are actually being implemented in an organized or structured way, it is premature to conclude Applicant's financial difficulties have been resolved or are under control. In August 2009, Applicant asserted he would start repaying his debts in September 2009. When his monthly payments were more than he could afford, he did not enter into the repayment plan. It was eight months later before he entered into a new agreement and asserts he has made two payments of \$173 in June 2010 and July 2010 and two \$70 student loan payments.

The lack of documentation prevents the application of AG ¶ 20(d) "[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." A mere intention to repay debts without documentation establishing repayment is insufficient to warrant applying this mitigating condition. Even with the two payments on his student loan and two payments to the law firm, it is too soon to tell if Applicant will carry through on his promise to make payments and continue making the monthly payments as required.

When an applicant begins to repay delinquent debt there must be a meaningful track record showing the payment of those debts. This includes evidence of actual debt reduction through payment of debts. An applicant is not required to establish that he has paid off each debt listed in the SOR. All that is required is for an applicant to demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The entirety of Applicant's financial situation and actions taken by Applicant to reduce his outstanding indebtedness must be considered. Applicant's payments for two months are insufficient to establish a pattern of payments showing his payments will continue.

Applicant still has unresolved delinquent debts. The new agreement includes some, but not all of the SOR debts. He is attempting to contact some of his creditors to establish a repayment plan. As previously stated, there is insufficient evidence to establish he is trying to address those delinquent debts not included in the law firm's debt schedule.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He has had steady employment since June 2004. He did not provide documentary proof of any payments to his SOR creditors. He has not provided documentation showing sufficient progress on his SOR debts. His documented steps 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 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 believe Applicant is sincere about getting his finances in order. Applicant is a good and valued employee. Applicant is 29 years old and presumed to be a mature adult. He has taken minimal steps to resolve his financial problems even though he has been steadily employed since June 2004. Applicant appears motivated to improve his

finances. However, absent a reliable track record of conduct, which he has not established, available positive information is insufficient to overcome the adverse inferences about his unpaid delinquent debts.

Applicant has failed to show a meaningful track record in addressing his debts. He has been aware of his financial difficulties since at least April 2009 when he reported to security that he was more than 60 days past due on his credit cards. In December 2009, he was asked about the debts listed in the SOR. Since then, he has paid less than \$600 on his charged-off, collection, or past-due accounts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. 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 Applicant's current financial circumstances, a clearance is not warranted. In the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed his debts; 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**

Subparagraphs 1.a—1.j: **Against Applicant**

Subparagraph 1.k: **For Applicant**

Subparagraphs 1.l—1.n: **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