



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



In the matter of:)	
)	
)	ISCR Case No. 09-07930
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire Department Counsel
For Applicant: *Pro Se*

January 31, 2011

Decision

HEINY, Claude R., Administrative Judge:

In 2003, Applicant had \$20,000 in liabilities discharged in bankruptcy. He currently has \$17,000 in past-due accounts or accounts placed for collection. He has failed to rebut or mitigate the security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Department of Defense'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 April 30, 2010, detailing security concerns under financial considerations.

¹ 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).

On June 28, 2010, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated September 21, 2010. The FORM contained 13 attachments. On October 1, 2010, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

On November 1, 2010, Applicant responded to the FORM. Department Counsel did not object to the material. Applicant's response was admitted into the record. On November 24, 2010, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.s, the \$1,407 debt owed to a government agency, which he stated had been paid with his tax return. He admitted the remaining factual allegations, with explanations. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 30-year-old electronic technician who has worked for a defense contractor since May 2008, and is seeking to obtain security clearance. From April 2005 to May 2008, Applicant was employed in a similar position with a different defense contractor. From August 1998 to August 2004, Applicant served on active duty as an enlisted member in the U.S. Marine Corps. He separated with an honorable discharge. In January 1999, Applicant married and has two children, ages 10 and 14.

In 2003, Applicant's Chapter 7 bankruptcy discharged his debts including total liabilities of \$22,000, which included \$20,000 of credit account debt.

In May 2009, Applicant was interviewed by a DoD investigator. The only explanation Applicant gave for his financial difficulties was the low-paying job he held following his August 2004 separation from the Marine Corps. He stated his bankruptcy was due to his failure to understand income and debt. Following the discharge in bankruptcy, he has accumulated an additional \$17,000 in delinquent accounts.

In his June 2010 SOR answer, Applicant asserted he had made payment arrangements on six delinquent accounts, had restarted payment on two additional accounts, and had made payment on an additional delinquent account (SOR ¶ 1.t, \$40). However, the documents provided indicate: a creditor who was owed \$4,041 agreed to accept \$60 monthly payments on his educational loan debt and a collection agency agreed to accept \$75 monthly payments on two accounts with balances of \$766 and \$958. Applicant provided documentation that the \$958 bill had been \$1,033 the previous month. The FORM, informed Applicant he had not produced sufficient evidence supporting the payment of his debts.

In 2006, Applicant purchased a used car for \$9,000. He asserts that two days after purchasing the car, it overheated and was towed back to the dealership. The

dealership refused to negate the contract. In early 2008, in anticipation of a home purchase, Applicant reviewed his credit bureau report (CBR) and discovered this debt and other debts were listed. Applicant's March 2009 CBR (Item 12) lists \$4,563 as past due on this debt. In his May 2009 interview, he stated he would pay the debt if required to do so to obtain a clearance. (Item 6) At that time, he was going to contact the creditor to attempt to negotiate a settlement on this debt and establish a repayment plan. He provided no documentation showing the creditor was contacted or that a repayment plan was established.

In 2007, Applicant's daughter required medical treatment. Applicant thought his company provided medical insurance had paid the medical bills. A collection company is attempting to collect the unpaid medical bills listed in: SOR ¶ 1. c (\$157), SOR ¶ 1. d (\$264), SOR ¶ 1. e (\$411), SOR ¶ 1. f (\$604), and SOR ¶ 1. g (\$294).

Although Applicant had reviewed his CBR in 2008 and noted a number of delinquencies were reported in that CBR, he failed to list those delinquencies when he completed his security clearance questionnaire. In March 2009, when Applicant completed his electronic Questionnaires for Investigations Processing (e-QIP) (Item 5), he listed his 2003 bankruptcy, but failed to indicate he was delinquent on any debt.

In November 2009, Applicant responded to the SOR. (Item 7) He included a November 2009 account statement from the creditor listed in SOR ¶ 1.k (\$ 1,276). He asserts, and it is documented, that this debt was included in his 2003 bankruptcy discharge. (Item 13) He asserted he was paying \$50 monthly to his creditor online. (Item 7)

Applicant had two students loans of \$3,000 and \$4,000, on which he was at one time more than 120 days past due. His October 2010 CBR lists these debts (SOR ¶¶ 1.q and 1.r) as zero past due and with a balance of zero. (FORM Answer) His CBR gave the cryptic entry of "Student loan perm assign government".

A copy of his delinquent accounts and their current status follows:

	Creditor	Amount	Current Status
b	Credit Card account placed for collection. (Item 9)	\$2,012	Unpaid. Same amount listed as past due on his October 2010 CBR. (FORM Answer)
c	Delinquent medical account. (Item 9)	\$157	Unpaid. Now being collected by the collection agency listed in e. The same balance is listed as past due on his October 2010 CBR. (FORM Answer)

	Creditor	Amount	Current Status
d	Delinquent medical account. (Item 9)	\$264	Unpaid. Now being collected by the collection agency listed in e. The same balance is listed as past due on his October 2010 CBR. (FORM Answer)
e	Medical account placed for collection. (Item 9)	\$411	Unpaid. In November 2009, Applicant asserted he had worked out a payment plan with the creditor. (Item 7) Same amount is listed as past due on his October 2010 CBR. (FORM Answer)
f	Medical account placed for collection. (Item 9)	\$604	Unpaid. Now being collected by the collection agency listed in e. The same balance is listed as past due on his October 2010 CBR. (FORM Answer)
g	Medical account placed for collection. (Item 9)	\$294	Unpaid. Now being collected by the collection agency listed in e. The same balance is listed as past due on his October 2010 CBR. (FORM Answer)
h	Delinquent medical account. (Item 9)	\$20	Unpaid.
i	Account placed for collection by utilities company. (Item 12)	\$185	Paid. (FORM Answer)
j	Returned check.	\$44	March 2009 CBR (Item 12) indicates nothing is past due on this account.
k	Line of credit was 120 days or more past due.	\$1,276	Included in Applicant's September 2003 bankruptcy discharge.
l	Account charged off. (Item 12)	\$934	Unpaid. Same amount is listed as past due on his October 2010 CBR. (FORM Answer)
m	Returned check that was the downpayment on a vehicle. (Items 9,10, and 12)	\$1,025	Unpaid. In November 2009, Applicant asserted he would pay this debt by January 2010. (Item 7) Same amount is listed as past due on his October 2010 CBR. (FORM Answer)

	Creditor	Amount	Current Status
n	Account placed for collection on a relocation loan. (Items 9 and 10)	\$2,591	Unpaid. In November 2009, Applicant asserted he had set up a \$75 monthly repayment agreement on this debt. (Item 7) Same amount is listed as past due on his October 2010 CBR. (FORM Answer)
o	Account placed for collection. (Items 9 and 10)	\$809	Balance has been reduced by \$145. Applicant had forgotten about this debt until he saw in on his 2008 CBR. At that time, he owed \$1,200. (Item 6) As of October 2010, the balance due had been reduced to \$645. (FORM Answer)
p	Account placed for collection. (Item 10)	\$994	Balance has been reduced by \$48. As of October 2010, the balance due had been reduced to \$846. (FORM Answer)
q	State student loan was 120 days or more past due. (Item 10)	\$166	Applicant's October 2010 CBR report lists this debt as "Student loan perm assign government" with a zero balance. (FORM Answer)
r	State student loan was 120 days or more past due. (Item 10)	\$134	Zero balance. See Q. above
s	Account placed for collection. (Item 10)	\$1,407	Paid. (FORM Answer)
t	Medical account placed for collection. (Item 12)	\$40	Applicant asserted, but failed to document that this debt had been paid in full.
u	Account placed for collection. (Item 12)	\$292	Unpaid. Applicant said it would be paid by December 2009. (Item 7) He provided no documents showing it has been paid. It does not appear in his October 2010 CBR.
v	Account placed for collection by water company. (Item 12)	\$103	Unpaid. Applicant asserted he would pay this debt by December 2009. (Item 7) He has provided no documents showing it has been paid. It does not appear in his October 2010 CBR.

	Creditor	Amount	Current Status
w	Charged-off vehicle account. (Item 12)	\$3,358	Unpaid. In 2006, Applicant purchased a \$9,000 vehicle and returned it two days later due to an engine overheating problem. In 2008, he learned this debt was on his CBR.
	Total debt listed in SOR	\$17,120	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior 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 so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. In 2003, Applicant had to resort to bankruptcy protection. At that time, \$20,000 in debt was discharged. Currently he has approximately \$14,000 in charged-off accounts, accounts placed for collection, or unpaid returned checks. The evidence supports application of 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(a) – (e) are potentially applicable:

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

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

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

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

(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.

The mitigating factors listed in AG ¶ 20(a) do not apply. The debts were not incurred long ago. In 2003, his debts were discharged in bankruptcy and he received a fresh start. I do not find against Applicant because he had to resort to bankruptcy. I find for him as to SOR ¶ 1.a. The debts in question have all arisen since then. There are 18 debts so they can not be considered infrequent. Since the debts have yet to be paid, they are considered recent. There is nothing in the record to indicate that like debts are unlikely to recur in the future.

The mitigating factors listed in AG ¶ 20(b) do not apply. There is nothing in the file indicating the financial problems were caused by factors beyond his control. In August 2004, he experienced two jobs which paid less than his Marine Corps' pay. But since April 2005, he has been gainfully employed. There is no evidence Applicant has received counseling or that this financial problems are being resolved. AG ¶ 20(c) does not apply.

Applicant paid the debt listed in SOR ¶ 1. s (\$1,407). The debt listed in SOR ¶ 1. k (\$1,276) was discharged in his 2003 bankruptcy. His student loans have a zero balance. For these four debts I find the mitigating factors listed in AG ¶ 20(d) apply. This is a good-faith effort to repay creditors. The debt listed in SOR ¶ 1. o (\$809) has been reduced by \$154 and the debt listed in SOR ¶ 1. p (\$994) has been reduced by \$48. Applicant was first questioned about his delinquent debts in a May 2009 interview. Having paid approximately \$200 in a year and a half is insufficient for me to find he has entered into a good-faith effort to repay these two creditors.

For the mitigating factors listed in AG ¶ 20(e) to apply Applicant has to 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 provides evidence of actions to resolve the issue. He disputes the vehicle repossession debt (SOR 1.w, \$3,358), but has provided no evidence of his attempt to resolve the issue. He first learned of the debt in early 2008, when he was attempting to buy a house. During his May 2009 interview, he said he would contact the creditor and establish a repayment plan. He asserted he would pay this debt if he had to in order to obtain a security clearance. He has failed to provide any documentation showing he has contacted the creditor or set up a repayment plan. AG ¶ 20(e) does not apply.

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. In 2003 all of his debts were discharged in bankruptcy. Following the bankruptcy, his accounts again went delinquent, past due, and were referred for collection. In the year and a half since being questioned about his delinquent debts he has done too little to address those obligations. He asserted he had established repayment plans, was making payment on some of the debts, or would contract his creditors to establish repayment plans. He produced little documentation to establish he had made regular, periodic, monthly payments on his delinquent debts.

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 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:	For Applicant
Subparagraphs 1.b –1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l –1.p:	Against Applicant
Subparagraph 1.q –1.s	For Applicant
Subparagraph 1.t –1.w:	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