



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



In the matter of:)	
)	
)	ISCR Case No. 09-07935
)	
)	
Applicant for Security Clearance)	

Appearances

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

November 26, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$43,000 on two vehicle repossessions and 18 accounts charged off or placed for collection. He has paid the majority of the debts. Applicant has mitigated the security concerns under financial considerations. Clearance is granted.

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 May 17, 2010, detailing security concerns under financial considerations.

On June 6, 2010, Applicant answered the SOR and requested a hearing. On July 13, 2010, I was assigned the case. On July 30, 2010, DOHA issued a Notice of Hearing for the hearing held on August 17, 2010. At the hearing, the Government offered Exhibits (Ex.) 1 through 6, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A through R, which were admitted without objection. On August 25, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the debts, with explanations, but denied the factual allegations SOR in ¶ 1.a. 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 42-year-old principal systems engineer who has worked for a defense contractor since January 2008, and is seeking to obtain a security clearance. He was in the Navy for six years working in aviation maintenance administration. (Tr. 29) Applicant's supervisor states Applicant has been a valuable asset whom he trusts. His supervisor has been impressed by Applicant's duty performance and attitude. (Ex. J)

The majority of Applicant's unpaid delinquent accounts occurred during a period of 24 months when he was going through a separation and then divorce. In July 2006 he separated and in June 2007, he divorced after 11 years of marriage. (Ex. 4, Tr. 27) There were two children from the marriage, a son age 13 and a daughter age 9. (Ex. 1, Tr. 27) In April 2008, his wages were garnished due to a \$1,810 monthly child support obligation when his ex-wife claimed he had not paid all of his child support. A portion of her assertion was valid. (Ex. 1, Tr. 50) He currently pays \$680 child support every two weeks plus \$100 monthly to repay a \$5,000 child support obligation. He is now current on his monthly child support payments of \$1,480. (Ex. 4, Tr. 28)

The divorce awarded Applicant his car and his ex-wife was awarded her car. Each was to pay their own debts. (Tr. 36) He and his then wife purchased a 2005 Hyundai automobile for \$24,000 with \$412 monthly payments. In April or May 2008, his ex-wife was unable to make the payments and the vehicle was repossessed. The vehicle was sold and a balance remains of \$13,693 (SOR ¶1.p). Applicant was a co-signer on the loan. The vehicle was granted exclusively to his ex-wife in the divorce decree. She is currently seeking bankruptcy protection which will include this obligation. (Ex. N)

Applicant and the creditor agreed to settle the repossession debt for \$5,000. (Tr. 52) When he informed his ex-wife he planned to settle the debt, she told him not to do

so because her lawyer had informed her the bankruptcy would remove this debt from both her credit report and his credit report. (Tr. 53) If the bankruptcy does not remove this debt from his credit bureau report, he will pay the \$5,000. (Tr. 53)

When Applicant separated, his then spouse stayed in the home and was supposed to pay the utility bills, but failed to do so. (Ex. 4) His ex-wife also failed to pay a \$224 (SOR ¶1.a) telephone account, which has now been paid. (Ex. A). He has paid a \$53 (SOR ¶1.c) electric bill, a \$159 (SOR ¶1.e) gas bill, and two cable bills (SOR ¶1.i, \$524 and SOR ¶1.j, \$359).

From May 2005 through December 2007, Applicant was paying two rents. During this period, he experienced periods of unemployment and under employment. He used a credit card to pay his living expenses during a six month period of unemployment. (Ex. 4, Tr. 26) In August or September 2008, the account became delinquent with a balance owing of \$10,000 to \$11,000. In February 2009, he was interviewed concerning his financial obligations. The previous month, he had called the creditor who agreed to settle for \$4,000 to \$5,000. (Ex. 4)

In May 2006, Applicant incurred a \$1,200 telephone bill while working for a contractor. He was to be reimbursed for this expense, but the contract ended and he was not reimbursed. (Ex. 4) The debt of \$3,070 (SOR ¶1.r) was settled for \$1,535. (Ex. K) In August 2006, he purchased a 2003 Infiniti automobile for \$18,000. He made monthly payments on the car for two years. After having made \$10,000 in monthly payments, he was informed he owed \$17,000 on the car. (Ex. 4) He asked the lender to repossess the car. The car sold for \$8,000. He is attempting to negotiate a settlement on the \$7,856 (SOR ¶1.k) owed.

In July 2006, Applicant opened a credit card account that went delinquent in June 2007. (Ex. 3, 4) He owed \$1,116 (SOR ¶1.t) on the account, which was settled for \$601. (Ex. T)

In January 2008, he moved to his current location. (Tr. 31) When he made the move, his company paid for one month of hotel expenses. He incurred an additional two months of living expenses, which he put on his corporate credit card incurring \$10,975 (SOR ¶1.n) debt. (Tr. 45) The creditor offered to settle the debt for \$4,000, but settling the account would require that it be closed. Since he needs to maintain this corporate account, he is negotiating with the credit card company on the repayment of this debt. (Tr. 45) There were two accounts with this creditor. He settled one of the accounts (SOR ¶1.o, \$2,309) for \$1,501. (Ex. M)

Applicant's current yearly salary is \$112,000. (Tr. 31) He owns a \$390,000 home, which he purchased in March 2008. He has no mortgage on this house. (Ex. 4, Tr. 19) He did not explain how he was able to pay off the mortgage on this house so quickly. He does not have any credit cards. He is also the beneficiary of a real estate trust. The fair market value of one farm is more than \$850,000. His grandmother controlled the property until her death in August 2009. The estate will be divided between Applicant,

his sister, and his mother. The estate involves nine farms and a million dollars in cash. (Tr. 30) The farms generate approximately \$500,000 yearly in income. (Tr. 31)

Applicant's mother is the executor of his grandmother's estate. His mother provided him a \$20,000 advance on his inheritance from the estate to make payment on his outstanding obligations. (Tr. 32) He currently is not receiving calls or letters from creditors demanding payment. (Tr. 35)

A summary of Applicant's two repossessions and 18 charged off or placed for collection accounts, which totaled approximately \$43,000 and their current status follows:

	Creditor	Amount	Current Status
a	Telephone account.	\$224	Paid. (Ex. A, Tr. 34)
b	Medical account.	\$159	Paid. (Ex. B, Tr. 34)
c	Electrical utility bill account.	\$53	Paid. (Ex. C, Tr. 34)
d	Insurance account.	\$180	Paid. (Ex. D, Tr. 35)
e	Gas utility bill account.	\$159	Paid. (Ex. E, Tr. 39)
f	Bad check.	\$81	Paid. (Ex. F, Tr. 39)
g	Medical collection account.	\$205	Applicant has requested a point of contact from the credit bureau for this creditor. (Tr. 40)
h	Collection account.	\$104	Paid. (Ex. H, Tr. 40)
i j	Two cable service accounts (\$524 and \$359).	\$883	Paid. (Ex. I, Tr. 41)
k	Collection account.	\$3,070	Paid. The account was settled for \$1,535. (Ex. K, Tr. 42)
l	Bank card charged-off account.	\$415	Paid. (Ex. L, Tr. 43)
m	Collection account.	\$1,526	Applicant has requested a point of contact from the credit bureau for this creditor. (Tr. 44)
n	Credit card collection account.	\$10,975	Creditor offered to settle for \$4,000, but Applicant needs to maintain this account. He is negotiating to repayment the debt. (Tr. 45)

	Creditor	Amount	Current Status
o	Credit card collection account.	\$2,309	Paid. The account was settled for \$1,501. (Ex. K, Tr. 47)
p	Vehicle repossession.	\$13,693	Ex-spouse was awarded the car in the divorce and is now seeking bankruptcy protection as to this debt. (Ex. N, Tr. 52) The creditor offered to settle for \$5,000. He will pay the settlement amount if the bankruptcy does not remove the debt from his credit reports. (Tr. 53)
q	Collection account.	\$44	Paid. (Ex. O, Tr. 53)
r	Vehicle repossession.	\$7,856	Paid. The account was settled for \$3,000. (Ex. P, Tr. 54)
s	Collection account for insurance bill.	\$207	Paid. (Ex. Q, Tr. 55)
t	Collection account on a credit card account.	\$1,116	Paid. The account was settled for \$601. (Ex. R, Tr. 55)
	Total debt listed in SOR	\$43,259	

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. He owed approximately \$43,000 on 20 delinquent and charged-off accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant's history of delinquent debt is documented in his credit report, his interview by an Office of Personnel Management (OPM) investigator, his SOR response, his response to interrogatories, and his FORM response. Throughout this process, he had admitted responsibility for two delinquent debts, totaling about \$9,000. These two debts are currently delinquent. He has provided insufficient documentation to show significant progress resolving these two debts. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19 (c).

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.

The mitigating conditions listed in AG ¶ 20(a) only partially apply. The debts were incurred some years ago, but only recently have they been paid. There were 20 obligations so the conduct was not infrequent. The majority of the debts arose at the

time of Applicant's separation and divorce. I can not find his separation and divorce to be event which are unlikely as to recur. However, I find that since the majority of the debts have been paid, the debts no longer cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) partially applies.

Under AG ¶ 20(b), Applicant experienced both separation and divorce, along with the financial burden associated with each. Additionally, he was unemployed for six months in the recent past. These are events beyond his control. He has now addressed the debts indicating some responsibility under the circumstances. AG ¶ 20(b) applies.

Under AG ¶ 20(c) there is no evidence Applicant has received financial counseling, but there is evidence the problem is being resolved. AG ¶ 20(c) applies.

Applicant has paid 16 of the delinquent accounts. He has asked the credit bureau to provide him points of contact for two additional accounts (SOR ¶1.g, \$205 and SOR ¶1.m, \$1,526) so that he can pay those accounts. The corporate credit card company offered to settle his \$11,000 (SOR ¶1.n) debt for \$4,000, but would require him to close the account. He wants to maintain the account and is attempting to negotiate a repayment plan on this account.

As to the remaining obligation, he and the creditor have reached a settlement agreement concerning his ex-wife's repossessed vehicle. He was going to pay \$5,000 to settle the matter, but his ex-wife told him her attorney believes her bankruptcy will remove this debt from both his credit report and hers. If the bankruptcy fails to do so, he will pay this debt. Having paid 16 accounts, he is in a position to pay two more accounts once he knows who to pay. He also negotiated the repossession debt, and is currently negotiating on the remaining credit card debt. The paying of the 16 accounts establishes a good-faith effort to repay his bills. Having paid the majority of his debts, I am confident he will actively pursue paying the four remaining accounts yet to be paid. AG ¶ 20(d) applies.

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. Applicant has paid the majority of his debts and is actively attempting to address the four remaining debts. These four debts are unlikely to be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) The Applicant was divorced and out of work for six months. He has now paid the majority of the debts. Paying the remaining debts will not be a problem considering he, his sister, and his mother are about to inherit a large distribution from his grandmother's estate. Even without the inheritance, his annual income is \$112,000, which is sufficient to address the two creditors (\$1,731) he is trying to locate. It is also sufficient to pay the two settlement offers (\$4,000 and \$5,000).

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a – 1.l: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge