



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



In the matter of: )  
)  
) ISCR Case No. 10-01190  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

April 29, 2011

**Decision**

MASON, Paul J., Administrative Judge:

Even though the listed debts were removed from Applicant's credit report by the relevant statute of limitations, Applicant still owes the debts that he voluntarily created. Without a plan to repay those creditors, the favorable financial responsibility Applicant has shown in the past few years is insufficient to find in his favor under the financial considerations guideline. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on September 14, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on December 8, 2009. A summary of this interview appears in his notarized interrogatory answers dated March 9, 2010. Applicant

agreed the investigator's summary could be used at a hearing to determine his security suitability. On September 8, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken under 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) implemented by the Department of Defense on September 1, 2006.

Applicant's undated answer was received by DOHA on October 6, 2010. DOHA issued a Notice of Hearing on November 19, 2010, for a hearing on December 8, 2010. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence (without objection) in support of the Government's case. Applicant testified. He sought to have five exhibits (AE A through AE E) proffered into evidence. Department Counsel noted that there were certain discrepancies between the entries in AE B and the corresponding date entries in AE C. One of those discrepant entries appears in the March 30, 2009, entry of AE C. Department Counsel then requested that because there were discrepancies between other entries in AE B and AE C, the chronological bank statements in AE B should be controlling as the best evidence. I agree with the Government's request. AE A through AE E are admitted into evidence, DOHA received the transcript (Tr.) on December 17, 2010. The record closed on December 17, 2010.

### **Findings of Fact**

The SOR alleges security concerns raised under the financial considerations guideline. All ten financial allegations represent delinquent credit card accounts totaling \$33,059. The accounts became delinquent between December 2001 and September 2009. The debt in SOR 1.a became a judgment in August 2006. Appellant admitted all allegations. He believes the listed accounts became delinquent during a period of irresponsibility in his life. That period ended in August 2006 when he became financially responsible. He asserts his past financial indiscretions should not preclude him from receiving a security clearance.

Applicant is 29 years old. He has been married since May 2007. His wife had their first child in November 2010. Applicant received his bachelor's degree in May 2007. He has been employed as an engineer by a defense contractor since May 2007.

Applicant spoke with an OPM investigator in December 2009. He discussed the delinquent accounts that are listed in the SOR. Between the age of 18 and 20 years old, he used the credit cards without thinking of the consequences. Concerning the judgment in SOR 1.a, Applicant explained he was trying to negotiate a settlement. He believed the

remaining accounts would eventually be removed from his credit report and he would not have to repay the accounts. (GE 3) Applicant has not used a credit card since 2004.

In the last six years, Applicant and his wife were able to save about \$50,000, with \$30,000 being used to establish a business venture. (*Id.*) Since graduating from college, Applicant purchased a second car, and will have the car financing paid by November 2010. Applicant is current on his student loans that he received in 2004. (*Id.*) Concerning SOR 1.b through 1.i, Applicant stated in his Answer to the SOR that, “the debt has been charged off. It is no longer on my credit report. See, attached A, Experian Credit Report and Score. I have no interest in paying this off and therefore will never need to generate funds to do so.”

Applicant satisfied the SOR 1.a judgment in November 2010 for \$4,700. (Tr. 37) The judgment was for a credit card he used between 2000 and 2004. He paid the judgment because it was negatively affecting his credit. (Tr. 38; AE D) He was unable to buy a house or obtain a line of credit. (Tr. 67)

Regarding the remaining charge card accounts, Applicant was 18 years old when he first received the credit cards. He claimed he paid the listed accounts regularly until 2003 or 2004 (Tr. 42), and continued to use the credit cards knowing he could not meet the monthly payments. (Tr. 42-43) He used the cards to help the family pay bills, to purchase clothing, and to take a vacation. (Tr. 39-40) In approximately 2005, Applicant thought about repaying the creditors. He called a couple of creditors to negotiate, but decided against going forward with a settlement. (Tr. 46-48) After deciding not to settle the debts, Applicant spoke with a family friend who did not think Applicant needed professional help. (Tr. 71) At the hearing, Applicant explained the only condition under which he could change his mind and repay the listed debt would be if it improved his chances of receiving a security clearance. (Tr. 48)

### **Character Evidence**

Applicant provided no character evidence about his job performance or evidence about his lifestyle.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the whole-person concept that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth in AG ¶ 18:

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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of not meeting financial obligations*).

When Applicant was 18, he began using credit cards. By 2003 or 2004, he continued to charge items on the cards, but no longer had the funds to meet the monthly payments. Applicant has repeatedly stated his intention not to repay any of the listed debts because the accounts have been removed his credit report by the statute of limitations. Applicant is unwilling to repay the listed creditors for debts he generated, regardless of the applicability of the statute of limitations. AG ¶¶ 19(a) and 19(c) apply.

Five conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

AG ¶ 20(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*);

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*);

AG ¶ 20(c) (*the persona has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*); and

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Even after Applicant's payment of the judgment, he still owes \$28,359 to nine creditors. Applicant's unwillingness to address the delinquencies continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant's delinquent accounts developed from circumstances entirely within his control. He has had no counseling and there is no evidence to suggest he is bringing these debts under control. Applicant receives some credit for settling the SOR 1.a judgment. However, the primary reason why Applicant paid the judgment was to improve his credit rating so he could buy a house. Though AG ¶ 20(d) applies to Applicant's payment of the judgment in November 2010, the other three mitigating conditions do not apply. Applicant has not overcome the adverse financial evidence under AG ¶¶ 19(a) and 19(c).

### **Whole-Person Concept**

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 29 years old. In May 2007, he graduated from college, he married, and began working for his current employer. He stopped using credit cards in 2004, and has saved a large amount of money. He has been making regular payments on his student loans since 2004. He comprehends the importance of being financially responsible.

Applicant's belief that he no longer is responsible for the SOR 1.b through 1.i debts because of the relevant state statute of limitations does not demonstrate a good-faith effort to resolve one's debts under the meaning of AG ¶ 20(d). The DOHA Appeal Board has stated that good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation." ISCR Case NO. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). Acting prudently requires more than relying on the statute of limitations. Applicant was mature enough to use the credit cards. He has to show the same maturity to address the indebtedness in a financially responsible manner. I have carefully evaluated the period since May 2007 when Applicant has demonstrated positive financial habits. In that time, Applicant could have used some of his savings to repay one or more of the delinquent accounts. He declined. He has not met his burden of persuasion under the financial considerations guideline.

### **Formal Findings**

Paragraph 1 (Guideline F):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b through 1.j:	Against Applicant

### **Conclusion**

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

Paul J. Mason  
Administrative Judge