



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



In the matter of:)	
)	
)	ISCR Case No. 10-01571
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

January 31, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant has one charged-off and 13 unpaid accounts placed for collection, which total approximately \$28,000. Applicant 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 September 13, 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 October 4, 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 November 17, 2010. The FORM contained 12 attachments. On December 2, 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.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on January 2, 2011. As of January 13, 2011, no response had been received. On January 19, 2011, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admits the factual allegations in the SOR. 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 33-year-old electronic technologist who has worked for a defense contractor since March 2006, and is seeking to obtain a security clearance. From July 1996 to November 2003, Applicant served as an enlisted member of the United States Marine Corps. He received a disability while serving and receives \$240 monthly from the Veterans' Administration for his disability. (Item 6) From October 2005 to October 2008, he served in the Army National Guard. He enlisted in hopes of becoming a helicopter pilot. Four times he prepared paperwork to attend Officer Candidate School (OCS), but was never accepted. For the first six months in the National Guard he attended drill, but was not paid. (Item 5) He received a general discharge under honorable conditions from the Army National Guard for unsatisfactory participation.

In 2001, Applicant was divorced. Applicant's financial problems began in 2003 due, in part, to careless spending and failing to keep track of his money. His divorce, child support, and his discharge from the military also contributed to his financial problems.

In September 2005, a judgment for past-due child support was granted against Applicant. Child support payments had been automatically deducted from his check and sent to the state Office of Recovery Services (ORS) until November 2003 when he left the state. From November 2003 to April 2005, his employer withheld \$300 per month child support from his salary, but, Applicant asserts, failed to properly send it to the ORS. Applicant currently has \$300 withheld monthly from his check, and is no longer behind on his child support obligation. (Item 6) He provided copies of his pay statements showing the monthly deductions.

In June 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 5) Even though he disagreed with some of the accounts reported on his credit bureau report (CBR), he listed numerous delinquent accounts on his e-QIP. At that time, he said he had recently taken full responsibility for

his debt and was focused on paying off all of his debt. He intended to focus on one debt at a time starting with the debt with the smallest balance. (Item 5) His goal was to be debt free within two years.

In July 2009, Applicant remarried and his new wife's daughter has medical problems. In September 2009, he paid six creditors \$20 each. Applicant did not make additional payments to the creditors due to having to pay for the daughter's medical treatment. (Item 6) As of May 2010, the daughter was in a residential program. The normal cost of the residential program was \$1,500 per month, but the program agreed to accept \$750 monthly. Applicant was paying the residential program \$450, which was the amount of child support received for the daughter. (Item 6)

As of July 2009, Applicant's gross monthly income was \$3,300. Child support of \$300 was withheld from his check. His net monthly remainder was \$180. (Item 6) In February 2010, his and his wife's gross income was \$2,000 per month and their monthly net remainder was \$38. (Item 6) In May 2010, their monthly gross income had increased to \$2,500, but their net income remained at \$38. He has not received any financial counseling.

In May 2010, Applicant's summer work schedule was to include at least 32 hours of overtime per pay period. (Item 6) In his May 2010 letter, he states he has come to understand the importance of credit and the differences between "want" and "need." (Item 6)

A summary of the judgment, the accounts placed for collection, and their current status follows:

	Creditor	Amount	Current Status
a	Collection account placed for a federal credit union. (Items 7, 8, 11, 12)	\$1,931	Unpaid. Applicant contacted the creditor, but was unsuccessful in negotiating a repayment arrangement.
b	Collection account. (Items 7, 8)	\$805	Unpaid.
c	Collection account placed for telephone service. (Items 7, 8)	\$1,120	Unpaid.
d	Collection account placed for computer purchase. (Items 7, 8)	\$1,941	Unpaid. Between April 2009 and August 2009, Applicant made three monthly payments of \$50. (Item 6) In September 2009, he made a \$20 payment. (Item 6) He has made no additional payments since being informed the account was sold to another collection firm.

	Creditor	Amount	Current Status
e	Credit card collection account. (Items 7, 8, 11, 12)	\$5,851	In September 2009, Applicant made a \$20 payment on this debt. (Item 6)
f	Bank account collection. (Items 7, 8, 11, 12)	\$3,178	Unpaid. (Item 6)
g	Student loan account placed for collection. (Items 7, 8, 12)	\$2,690	Unpaid. Applicant has been unsuccessful in contacting the creditor. (Item 6)
h	Signature loan account charged off. (Items 7, 8, 11, 12)	\$4,357	Account opened in 2000 and become delinquent in November 2003, when he left the Marine Corps. In September 2009, Applicant made a \$20 payment on this debt. (Item 6)
i	Credit card account placed for collection by a federal credit union. (Item 11, 12)	\$1,408	Unpaid. (Item 6)
j	Credit card account placed for collection by a federal credit union. (Item 11, 12)	\$653	Unpaid. (Item 6)
k	Office of Recovery Services for child support judgment filed in 2005. (Item 12)	\$3,340	Applicant is current on his child support payments. In April 2003, Applicant became past due on his child support obligations. In November 2007, the matter was resolved. (Item 6)
l	Dentist bill placed for collection. (Item 11)	\$2,700	Applicant is disputing this debt because the dental treatment he received only made matters worse. (Item 6)
m	School account placed for collection. (Item 11, 12)	\$975	Unpaid. (Item 6)
n	Gas utility company account placed for collection. (Item 12)	\$146	Unpaid. (Item 6)
o	Cable account placed for collection. (Item 11, 12)	\$106	Unpaid. (Item 6)
	Total debt listed in SOR	\$31,201	

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 that Applicant has a history of financial problems. Applicant had one unpaid judgment, one charged-off bank loan, and 13 accounts placed for collection totaling approximately \$31,000. Although now current on his child support obligations, he is still delinquent on the charged-off signature loan and 13 collection accounts totaling approximately \$28,000. 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."

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 are numerous and remain unpaid. The debts were not incurred under such circumstances that they are unlikely to recur. His financial problems started in 2003, when he left the Marine Corps. His continuing financial problems cast doubt on his current reliability, trustworthiness, and good judgment.

The mitigating conditions listed in AG ¶ 20(b) have only limited application. In 2001, Applicant divorced and incurred a \$300 monthly child support obligation. When he remarried in 2007, his wife's daughter required special attention and is currently in a program costing \$1,750 per month on which Applicant pays \$450 monthly. The divorce was largely beyond his control, however that occurred more than nine years ago. The daughter's expense is also an event largely beyond his control, however, he is paying the residential program \$450 monthly, which is the amount of child support received for the daughter. He failed to document any additional expenses for the daughter. AG ¶ 20(b) has limited applicability.

The mitigating factors listed in AG ¶20(c) do not apply because there is no indication Applicant has received financial counseling nor is there an indication his financial problems are under control. As of May 2010, his monthly net income was \$38, which is insufficient to address his accounts placed for collection. In May 2010, he stated his job during the summer would pay him at least 32 hours overtime per pay period. He failed to indicate if he received the overtime pay or if he used it to pay his collection accounts.

Applicant was behind on his child support obligation which resulted in the 2005 judgment. His \$300 monthly child support has always been deducted from his pay. He is current on his child support obligation and has no arrearage. I find for him as to SOR ¶ 1.k. Since July 2009, when questioned about his financial problems, he has been aware of the Government's concerns. Since that time, he made five payments of \$20 each. This is insufficient to show a good-faith effort to repay overdue creditors or otherwise resolve debt. AG ¶20 (d) does not apply.

Applicant disputes the dentist bill (SOR ¶ 1.I, \$2,700) because it did not help his problem. For the mitigating conditions listed in AG ¶20(e) to apply there not only needs to be a reasonable basis to dispute the legitimacy of the past-due debt, but there must also be documented proof to substantiate the basis of the dispute or evidence the action is being resolved. Applicant has not done this. AG ¶ 20(d) 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. Applicant's financial problems started when he left the Marine Corps in 2003. He has been employed with his current employer since March 2006—more than four years. In June 2009, he stated he intended to take full responsibility for his debts and hoped to have them paid within two years. Since that time he has made \$120 in payments on the accounts placed for collection. With his currently monthly remainder of \$38, it is unlikely he will be able to make payment on the collection accounts.

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 – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l and 1.o:	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