



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



In the matter of: )  
)  
) ISCR Case No. 10-01820  
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Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

03/12/2013

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant’s financial indebtedness was caused by medical and employment problems. He was involved in a car accident in August 2005 that required hospitalization and four months of rehabilitation to learn how to walk again. He was hospitalized in May 2006. He was unemployed for seven months in 2007 before finding his current employment. Though he did not address his debt until after receiving the SOR, he has paid off six of eight debts and is engaged in a monthly payment plan for the seventh debt. Applicant has mitigated the financial security concerns. Eligibility for access to classified information is granted.

## **Statement of the Case**

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on November 19, 2010. He was interviewed by an investigator from the Office of Personnel Management (OPM) on two occasions: December 8, 2010, and February 7, 2011. The interview summaries appear in Government Exhibit (GE) 2. Under question #3 of GE 2, Applicant answered affirmatively that the investigator's interview summaries accurately reflected information he provided to the investigator. In response to question #6 of GE 2, Applicant answered "yes" that he agreed with and adopted the investigator's interview summaries as accurately reflecting the interviews. In his answers to interrogatories (GE 3), Applicant provided the status of the judgment and delinquent debts that are listed in the Statement of Reasons (SOR).

On November 2, 2012, the Department of Defense (DOD) issued a SOR detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant's answer to the SOR was notarized on November 25, 2012. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a notice of hearing on January 18, 2013, for a hearing on February 14, 2013. The hearing was held as scheduled. At the hearing, without objection, six exhibits (GE 1 through GE 6) were admitted in evidence in support of the Government's case. Applicant testified. Eight exhibits (AE A through AE H) were entered into evidence in his behalf without objection. DOHA received the transcript on February 22, 2013. The record in this case closed on February 22, 2013.

## **Findings of Fact**

The SOR lists eight allegations under the financial considerations guideline. There are six medical accounts, one judgment for an unpaid student loan, and one telecommunications account. The total amount of debt is \$29,072. Applicant admitted all allegations.

Applicant is 34 years old. He has a 12-year-old daughter. He served in the U.S. Marine Corps from March 1999 until his other than honorable discharge in April 2000, following drug possession allegations. He received a network administration certificate (information technology) from a technical school in September 2000. He obtained additional training at a technical college from January 2003 to December 2004, but received no degree or certificate.

Since September 2007, Applicant has been employed as a systems technician 2 with a defense contractor. Before his current employment, he was unemployed from January to September 2007. Prior to his unemployment, he was a networking instructor from January 2006 to January 2007, preceded by unemployment from August 2005 to December 2005. Applicant has held an interim clearance since September 2007.

In August 2005, Applicant was involved in a car accident and sustained a broken leg, a crushed knee, and a broken wrist. He was employed as a sales manager at the time. Besides causing unemployment, his injuries required hospitalization and four months of rehabilitation to learn how to walk again. Though his health insurance was inadequate to cover all the medical costs, a portion of bills was paid with his tax returns. During his rehabilitation, his parents provided care and financial support. (GE 3 at 270)

Applicant was also unemployed from January 2007 until September 2007, when he was hired by his current employer. During this time, he moved to another part of the United States in search of a job. When he could not find employment, he returned home.

The delinquent accounts in the SOR are based on information appearing in three credit reports (GE 4-GE 6).

SOR 1.a. **Resolved.** Medical debt (\$501) for services rendered during Applicant's four-day hospitalization in May 2006. On February 13, 2013, the creditor's collection agency notified Applicant that the delinquent account was paid in full. (AE A)

SOR 1.b. **Resolved.** Medical debt (\$224) for services rendered in May 2006. On December 18, 2012, the creditor's collection agency notified Applicant that the account was paid in full on November 27, 2012. (AE B)

SOR 1.c. **Resolved.** Medical debt (\$28) for services rendered in May 2006. On December 18, 2012, the creditor's collection agency notified Applicant that the account was satisfied on November 26, 2012.

SOR 1.d. **Payment plan.** Student loan judgment (\$15,952). The judgment was filed in January 2005. (GE 4)<sup>1</sup> Applicant's underemployment, unemployment, and medical issues, were major reasons why a judgment was filed against him. On February 6, 2013,

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<sup>1</sup> This was the amount of the judgment on November 30, 2010, the date of the credit bureau report. As a result of interest and collection costs, the amount increased to \$18,262 on June 7, 2012, when Applicant was advised by letter he could settle the judgment with a \$15,300 payoff or make monthly payments of \$198 a month until the loan was satisfied. (GE 3 at 264)

the student loan organization notified Applicant that his \$5,000 payment constituted acceptance of a payment plan of \$150 a month beginning on March 15, 2013. (AE D; Tr. 30)

SOR 1.e. **Resolved.** Medical debt (\$417) for services at an unknown time. The account became delinquent in March 2007. On February 7, 2013, the creditor's collection agency notified Applicant that the account was paid in full. (GE 4; AE E)

SOR 1.f. **Unresolved.** Medical debt (\$249) for services at an unknown time. After obtaining a copy of his credit report, contacting a debt firm, searching the Internet, and telephoning other sources, Applicant was unable to identify the medical account. (Tr. 24) Had he known about the account's posted telephone number in the credit reports, he would have attempted contact with the creditor. (Tr. 27)

SOR 1.g. **Resolved.** Telecommunications account (\$265) opened in 2002 with an unknown date of becoming delinquent. On December 12, 2012, Applicant was notified by letter that the account was settled. (AE G)

SOR 1.h. **Resolved.** Medical account (\$11,436) for hospitalization of four days in May 2006. Applicant paid a portion of this debt with a settlement check (\$9,308) he received on January 13, 2013, from the party who collided with Applicant's car in January 2012, and left the scene of the accident before the police arrived. He applied a portion of the settlement check to the student loan judgment and the other debts. (GE 3 at 263, AE H; Tr. 32) He also withdrew about \$12,000 from his retirement savings to pay the other delinquent medical accounts. He does not have to repay the amount because he used the proceeds to pay medical bills. (Tr. 33-34)

Applicant has never had financial counseling of any kind. Although he does not use a budget, he is current on all his other financial obligations. He has never had a credit card. The credit reports do not list any credit cards. (Tr. 25, 35; GE 4-6) He provided credible testimony and supporting documentation that he satisfied six of the eight delinquent accounts listed in the SOR.

### **Character Evidence**

Applicant provided no character evidence related to his job performance or his conduct in the community where he lives.

### **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 that are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision for security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 of establishing that it is clearly consistent with the national interest to grant him a security clearance.

## **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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The two potentially pertinent disqualifying conditions under AG ¶ 19 are:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Government has the burden of presenting sufficient information to support all allegations of the SOR. Based on the three credit reports, Applicant's December 2010 and February 2011 interview summaries, his April 2012 interrogatory answers, and the record, the Government's evidence supports all allegations of the SOR. AG ¶¶ 19(a) and 19(c) apply.

Five mitigating conditions under AG ¶ 20 are potentially pertinent:

(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 reliability, trustworthiness, and good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control 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; and

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

The record reflects that Applicant incurred the student loan judgment and seven delinquent accounts between January 2005 and March 2007. The absence of new delinquent financial obligations for more than five years and Applicant's satisfaction of six of eight listed debts constitutes convincing evidence of his current reliability, trustworthiness and good judgment. AG ¶ 20(a) applies.

Applicant's financial problems were caused by medical treatment, unemployment, and underemployment problems beyond his control. In August 2005, he was involved in a very serious car accident leaving him unemployed and unable to walk for four months. After resuming work as a network instructor in January 2006, Applicant was hospitalized for four days in May 2006 because of a medical condition. In January 2007, Applicant was unemployed again. For nine months, he searched for work in another part of the United States without success. However, Applicant has been continuously employed since September 2007 with no disruption. With no evidence that demonstrates an effort to repay the delinquent accounts until after he received the SOR in November 2012, Applicant can only receive limited mitigation under AG ¶ 20(b).

Though Applicant has never had financial counseling, he exercised good judgment in seeking qualified assistance in his attempt to pay the creditor in SOR 1.f. Having settled

or satisfied six of the eight listed creditors, Applicant has furnished credible evidence that establishes his financial problems are being resolved. The evidence under AG ¶¶ 20(c) and 20(d) applies to overcome the adverse evidence under AG ¶¶ 19(ad) and 19(c).

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations 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 set forth in 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 34 years old and single. He has a 12-year-old daughter. He has 13 months in the U.S. Marines, receiving an other than honorable discharge in April 2000. He earned a networking administration certificate in September 2000. He has worked as a systems technician 2 for a defense contractor since September 2007.

Applicant's medical and employment problems have been addressed earlier in this decision. Though he did not start to repay the delinquent debts until after he received the SOR in November 2012, his documented steps in resolving the six of the listed debts justify complete confidence he will complete the student loan payment plan (SOR 1.d), and resolve the medical account (SOR 1.f) After weighing the disqualifying evidence against the mitigating evidence, and in the context of the whole-person concept, Applicant has persuasively removed the security concerns presented under the financial guideline.

## **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 (Guideline F):                      FOR APPLICANT

Subparagraphs 1.a-1.h:                      For Applicant

## **Conclusion**

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

Paul J. Mason  
Administrative Judge