



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



In the matter of:)	
)	
)	ISCR Case No. 10-02955
)	
Applicant for Security Clearance)	

Appearances

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

April 28, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant had two charged-off accounts and three accounts placed for collection, which totaled approximately \$22,000. One charged-off account and two collection accounts, which total in excess of \$16,000, remain unpaid. Applicant has failed to rebut or mitigate the security concerns under Guideline F, 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 November 18, 2010, detailing security concerns under Guideline F, 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 December 9, 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 December 23, 2010. The FORM contained eight attachments. On January 31, 2011, 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 February 9, 2011, Applicant responded to the FORM. Department Counsel did not object to the material. Applicant's response was admitted into the record as Items A through D. On February 24, 2010, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations, with explanations. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 43-year-old engineering technician who has worked for a defense contractor since January 2007, and seeks to obtain a security clearance. From August 1986 to August 31, 2006, he was on active duty with the Navy. He retired from the Navy as a petty officer first class (PO1, E-6) (Items 4, 5) and receives retirement pay. Following his retirement, he was unemployed in September 2006 and October 2006. (Item 4)

In July 2006, Applicant divorced his first wife and in May 2009 married his second wife. His wife has cancer and has been receiving treatment since at least April 2010. The record is silent as to the financial impact of her condition other than to state it caused Applicant to miss a payment on the debt listed in SOR 1.c. The record fails to show if his spouse's condition resulted in the loss of her job or if she had a job before the discovery of cancer. Applicant has three children: a daughter age 21 and sons ages 21 and 8. (Item 4)

In February 2001, Applicant purchased a \$25,000 2000 Ford automobile with \$431 monthly payments for 60 months. (Items 5, 6) He made timely payments for approximately two years before he was unable to continue making payments. He voluntarily surrendered the automobile resulting in a balance due of \$19,373 (Items 5, 6). He was unable to continue the monthly payments because his wife had a baby. (Ex. 5) In November 2009, he contacted the creditor and agreed to make \$210 monthly payments until the debt was paid in full. (Item 5) He provided no documentation showing he had made the payments as agreed. The collection agency attempting to collect this debt (SOR 1.e) and the \$2,858 debt (SOR 1.c) are the same, but the debts represent two separate obligations.

In 2002, Applicant obtained a \$2,000 personal loan repayable at \$204 per month. (Item 5) As of December 2009, he owed approximately \$1,900 on the debt and asserted he was making his monthly payments. His November 2010 credit bureau report (CBR)

lists \$703 past due on a charged-off account (SOR 1.a). (Item 5) The CBR also lists a \$13,123 account with the same creditor with a different account number that was being paid as agreed. (Item 5) In August 2010, the creditor of the \$2,537 charged-off account (SOR 1.a) had offered to settle the account for \$658, which Applicant accepted and paid. (Item 3, Item B)

A collection agency was attempting to collect a \$2,858 bank credit card account (SOR 1.c). (Items 5, 6, 7, and 8) Applicant provided money order receipts indicating he had paid \$1,948 on this debt. (Item C) An \$809 credit card account (SOR 1.d) was reported as a collection account on Applicant's March 2009 CBR (Item 6) The account had been opened in April 2000. The only account with this creditor reported on his December 2010 CBR was a closed account opened in January 1996 with a zero balance that had previously been paid as agreed. (Item 5)

On Applicant's November 2009 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated that during the previous seven years he had accounts turned over to a collection agency. (Item 4) On his e-QIP, he indicated he was making payments on the \$2,537 charged-off account (SOR 1.a) and acknowledged a vehicle had been voluntarily repossessed resulting in a \$15,586 debt (SOR 1.e). He also listed a \$2,858 debt (SOR 1.c), but indicated he had received no information about the debt from the creditor.

Applicant admits the \$222 charged-off account (SOR 1.b). (Item 3) He indicated the debt was being paid through his bank under "bill pay." (Item 3) In his February 2011 letter, he states he owes \$349 on this debt and asserts it will be paid in full by March 2011. (Item A) In his SOR Answer, he admitted the remaining collection accounts (SOR 1.c, \$2,858; 1.d, \$809; and 1.e, \$15,586), but indicated they did not appear on his December 2010 CBR. (Item 3)

As of October 2010, Applicant's net monthly income (including retirement pay) was \$4,567. His monthly expenses were \$3,431 and he was paying \$414 on his debts. His net monthly remainder was \$722. (Item 5)

A summary of the SOR past-due and charged-off accounts and their current status follows:

	Creditor	Amount	Current Status
a	Bank card charge off.	\$2,537	Settled in full for \$658 and paid. (Item A)
b	Bank card charge off.	\$222	\$349 owed on this account. No documentation showing payment on the debt.
c	Credit card collection account.	\$2,858	Paying. Applicant has paid \$1,949 on this debt.

	Creditor	Amount	Current Status
d	Credit card collection account.	\$809	Unpaid. Applicant admits the debt, but asserts it does not appear on his December 2010 CBR.
e	Collection account on a 2003 vehicle repossession.	\$15,586	Unpaid. Applicant asserted he had contacted the creditor in November 2009 and agreed to make \$210 monthly payments until the debt was paid in full. There is no documentation showing payments have been made.
	Total SOR debt	\$22,012	

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 interests of 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 (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to 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.

Applicant had two charged-off accounts and three collection accounts, which totaled approximately \$22,000. 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.

Because Applicant has three unpaid delinquent accounts, his financial problems are continuing in nature. He receives minimal application of the mitigating conditions listed in AG ¶ 20(a). Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

The mitigating condition listed in AG ¶ 20(b) does not apply. Applicant divorced in July 2006 and remarried in May 2009. Additionally, his wife has cancer. Although these are factors beyond his control, there is little record evidence indicating how these events impacted his financial ability to pay his delinquent accounts. He indicated his wife's cancer caused him to miss one payment, but there is no indication of other financial problems caused by her medical condition. His two months of unemployment following his retirement from the Navy are not recent having occurred more than four years ago. He has been employed with his current employer since January 2007, also more than four years ago, and the 2003 repossession of his automobile has yet to be addressed. The evidence is insufficient to find he has been substantially affected by circumstances beyond his control.

The mitigating condition listed in AG ¶ 20(d) applies to the \$2,537 debt listed in SOR 1.a, which was settled for \$658 and the \$2,858 debt listed in SOR 1.c, on which he has paid approximately \$2,000. He asserts he is making timely monthly payments on the \$222 debt (SOR 1.b) and the \$15,586 debt (SOR 1.e). Despite being questioned by

a DoD investigator about his financial situation in December 2009, and despite answering DOHA interrogatories in October 2010, Applicant has produced no evidence documenting that he has made timely payments on these two collection accounts, which he claimed he was paying. The mitigating condition listed in AG ¶ 20(d) applies to the two debts he has paid or is paying, but not to the other three.

In Applicant's FORM response, he admits three collection accounts, but states they do not appear on his December 2010 CBR. There are a variety of reasons for an account to appear on one CBR to not appear on another CBR. If the account or debt was paid, the CBR would list the account with a zero balance and indicate the account was settled or paid. The failure of an account to appear on a CBR is not definitive proof that the debt has been paid or Applicant no longer owes the debt. He acknowledged the 2003 repossession of his automobile and said he had agreed to make monthly payments on the debt. He also admits the \$222 collection account and the \$809 collection account.

The mitigating condition listed in AG ¶ 20(c) does not apply. There is no evidence Applicant has received financial counseling and three of the delinquent accounts, which total in excess of \$16,000, remain unpaid.

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant admitted all five of the debts and has not provided documented proof to substantiate the basis of any disputed account.

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. There is some evidence in favor of

mitigating Applicant's conduct. His wife's medical condition and his 20 years of Naval service have been considered. An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The issue is not simply whether all of Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant has settled and paid one charged-off account and made substantial payment on a collection account. However, the debt resulting from the 2003 repossession of his automobile, a charged-off account, and a collection account have neither been paid nor have repayment arrangements been made regarding these three debts. His long-standing failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, Applicant has not mitigated the security concerns arising from his financial considerations. A clearance at this time is not warranted.

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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge