



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 10-05894 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Braden F. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

July 27, 2011

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant had approximately \$51,000 in charged-off and collection accounts. He addressed approximately \$9,500 of that debt. Approximately \$41,000 remains to be addressed. 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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued

<sup>1</sup> 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.

a Statement of Reasons (SOR) on December 6, 2010, detailing security concerns under Guideline F, financial considerations.

On December 24, 2010, Applicant answered the SOR and requested a hearing. On March 2, 2011, I was assigned the case. On March 21, 2010, DOHA issued a Notice of Hearing for the hearing held on April 13, 2011.

The Government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through F, which were admitted into evidence without objection. The record was held open to allow additional information from Applicant. On May 2, 2011, additional material was submitted. Department Counsel had no objection to the material, it was admitted into the record as Exs. G through U. On April 22, 2011, DOHA received the hearing transcript (Tr.).

### **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, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 38-year-old senior electronics engineer who has worked for a defense contractor since June 2001, and seeks to maintain a top secret security clearance. (Tr. 23, Ex. 1) From August 1990 through December 1995, Applicant served in the U.S. Navy as a cryptology technician as an E-4, leaving with an honorable discharge. (Tr. 24, 43, 44, Ex. 1) Applicant's co-workers, supervisors, and friends state: Applicant has performed his tasks with professionalism and diligence, he is trustworthy, reliable, has good judgment, and is a hard worker. (Ex. A - C) He is single and his salary was: \$72,513 in 2008 (Ex. Q), \$77,464 in 2009 (Ex. R), and \$78,298 in 2010 (Ex. S). His current fiancée is a financial analyst with an annual income of \$72,000. (Tr. 57) Together their annual household income is \$150,000. (Tr. 40) Applicant has been married and divorced three times. He was married from 1993 to 1994, 1998 to 2002, and 2003 to 2008. (Tr. 45) He has no child support or alimony obligations. (Tr. 45)

In 2004, staff at Applicant's company put him in touch with a credit counseling service. That counseling company determined he had too much debt and put him in touch with Consumer Credit Counseling Service (CCCS). He asserted he made \$700 monthly payments to CCCS for approximately one year. (Ex. 5) His financial problems arose when his former spouse was unable to work due to health problems. (Ex. 5) His ex-wife had used their joint credit cards excessively. Applicant admits he should have done more to curb her spending. Since his divorce in 2008, he has not used credit to make purchases. (Ex. 5) In December 2004, Applicant filed for Chapter 7 bankruptcy protection and in March 2005, all of his debts with the exception of his two car loans were discharged. (Tr. 27, 40) Prior to the bankruptcy, he received financial counseling.

(Tr. 46) Six months after the bankruptcy, his most recent wife lost her employment. (Tr. 47)

In June 2006, Applicant and his then-wife purchased a home for \$100,500 with \$1,600 monthly mortgage payments. (Ex. 5, 6) At the same time and with the same mortgage lender, they received a second loan on the property of \$25,150 with monthly payments of \$279. (Ex. 6) The money from the second loan was used to pay closing costs and other expenses related to the home purchase. (Tr. 64) When the house was purchased, his former spouse agreed to get a job, but failed to do so. (Tr. 24, 47) In November 2008, his mortgages became past due. In April 2009, the house went to foreclosure and was sold in May 2009. Applicant asserts he owed no money on the initial \$100,500 mortgage following the foreclosure. (Ex. T) He acknowledged \$24,929 was outstanding on the second loan. (Ex. T) The creditor would not discuss any payment plans on this debt stating the balance had to be paid in full or a lump-sum offer could be made. (Ex. T) He believes the passage of time prevents the creditor from suing him on his debt. (Ex. T)

The initial \$100,000 mortgage does not appear on Applicant's June 2010 credit bureau report (CBR) (Ex. 3). It appears on his November 2009 CBR (Ex. 2), his August 2010 CBR (Ex. 4), and November 2010 CBR (Ex. 6) with indications that the mortgage was in foreclosure. However, the \$24,926 debt to the mortgage company does appear as a charged-off account on his November 2009 CBR (Ex. 2), his June 2010 CBR (Ex. 3), and on his August 2010 CBR (Ex. 4). It appears on his November 2010 CBR (Ex. 6) with an indication the account was transferred or sold.

In December 2009, Applicant was questioned about his delinquent accounts. (Ex. 5) In February 2011, he entered into a repayment agreement whereby he settled a \$4,495 obligation (SOR 1.h) for \$2,248. (Ex. D) The debt was for a KIA vehicle destroyed in December 2008. He made two \$1,124 payments in accord with the agreement, one in February 2011 and the second in March 2011. (Exs. D, E, and H)

Prior to the April 2011 hearing, Applicant paid approximately \$250 on two additional delinquent debts listed in the SOR. In February 2011, Applicant paid the telephone collection account (\$160) listed in SOR 1.f. (Ex. I) and the \$91 debt (SOR 1.c) (Ex. K). In April 2011, following the hearing, he paid the telephone collection account (\$161) listed in SOR 1.g. (Ex. J); a collection service account (\$77.50) (Ex. L); the telephone collection account (\$275) listed in SOR 1.b \$143.76. (Ex. M); and the collection account (\$155) listed in SOR 1.n. (Ex. N) In April 2011, he also paid \$3,150 on the collection account (\$4,459) listed in SOR 1.j. (Ex. P) This charged-off account was the result of a repossessed Nissan. (Tr. 35) The creditor agreed to accept \$3,150 on this delinquent obligation.

In April 2011, Applicant entered into a repayment agreement with a collection agency agreeing to make \$340 monthly payments on the \$16,343 collection accounts listed in SOR 1.d and SOR 1.e. (Ex. O) His first payment was to be made approximately one month after the hearing. He failed to document any payment in accord with the

plan. The debt arose from two student loans taken in 2008 in order for Applicant to obtain his master's degree in electrical engineering. He took courses, but never obtained his master's degree. (Tr. 52) His employer would reimburse the cost of classes. (Tr. 53) He is current on his \$130 monthly payments on his student loans related to obtaining his bachelor's degree. (Tr. 37, 52)

In May 2011, Applicant submitted his federal tax returns for tax years 2008 (Ex. Q), 2009 (Ex. R), and 2010 (Ex. S) He anticipates receiving refunds of: \$1,208, \$1,880, and \$1,938. He has one credit card with a balance on it of \$250. (Tr. 58) He has \$6,000 in his 401(k) retirement plan. (Tr. 65)

The SOR lists ten delinquent accounts totalling approximately \$51,000. He has paid approximately \$6,000 on seven delinquent accounts addressing approximately \$9,500 of his delinquent debt. He has provided no documentation as to three additional debts totalling approximately \$41,000. A summary of Applicant's judgment, accounts charged off, accounts placed for collection, and other unpaid obligations and their current status follows:

|   | Creditor  | Amount   | Current Status  |
|---|---|----------|---|
| a | Chapter 7 Bankruptcy filed in December 2004. Debts discharged in March 2005.                                |          | Applicant asserts the bankruptcy was the result of his wife's unemployed.   |
| b | Telephone collection account.   | \$275    | In April 2011, he paid \$143.76. (Ex. M)  |
| c | Collection account.   | \$91     | Paid. (Ex. K)   |
| d | Student loan collection account. Debt is now \$16,343. (Ex. O)  | \$10,562 | The creditor agreed to a repayment plan whereby he would make \$340 monthly payments. (Ex. O) No documentation was provided evidencing payment in accord with the plan. |
| e | Student loan collection account.  | \$5,781  | This student loan and the previous student loan (d above) have been consolidated into a single debt. (Tr. 31)   |
| f | Telephone collection account.   | \$160    | Paid. (Ex. I, Tr. 32)   |
| g | Telephone collection account.   | \$161    | Paid. (Ex J)  |
| h | Vehicle repossession. Vehicle was purchased in 2005 and "totalled" in an accident in December 2008. (Ex. 5) | \$4,175  | Settled and Paid. (Exs. D, E, and H)  |

|   | Creditor                            | Amount   | Current Status   |
|---|-------------------------------------|----------|--|
| i | Second mortgage on foreclosed home. | \$25,150 | Applicant acknowledges \$24,926 remains outstanding on this debt. He is unable to make a lump-sum payment and the creditor refused to accept a payment plan. (Ex. T) |
| j | Repossessed vehicle account.        | \$4,459  | Settled and paid. (Ex. P)  |
| k | Collection account.                 | \$155    | Paid. (Ex. N)  |
|   | Total debt listed in SOR            | \$50,744 |  |

### 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 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.

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 interests of 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. Applicant had to resort to bankruptcy protection in 2004, which discharged all of his debt with the exception of his two car loans. Even with the fresh start, he accumulated approximately \$51,000 in collection 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.

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.

None of the mitigating factors for financial considerations are sufficient for a determination in Applicant's favor. His financial difficulties are both recent and multiple. In 2006, when he and his then-wife purchased a home, she agreed to get a job, which she failed to do. He was divorced in 2008, but has been working for the same employer since June 2001 with a current annual salary of \$78,000. He received some credit or financial counseling prior to his bankruptcy and has addressed \$9,500 of his delinquent debt. However, his three remaining obligations amounting to approximately \$41,000 remain unpaid. Applicant has failed to act timely or responsibly under the circumstances as to these remaining delinquent accounts.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by his ex-wife's spending prior to his 2008 divorce. I do not find the divorce, his third, to have occurred under such circumstances that such an event is unlikely to recur accompanied by the associated financial difficulties. Additionally, the size of the unpaid delinquent debt is such that it casts doubt on Applicant's current reliability, trustworthiness, or good judgment. "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4

(App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999). AG ¶ 20(a) has limited application.

Applicant receives partial application of the mitigating conditions listed in AG ¶ 20(b). He divorced in 2008 together with the financial burden associated with the divorce. Other than being required to pay part of the marital bills, he failed to establish how his divorce prevented him from addressing his delinquent accounts. AG ¶ 20(b) has limited application.

AG ¶ 20(c) requires there be financial counseling, or clear indications that the problem is being resolved or is under control, which are not present. Applicant asserted he has entered into an agreement to pay \$340 monthly on this two student loans totaling approximately \$16,000. However, he has provided no documentation he has made any payment in accord with this agreement. His first payment was to be made a month after the hearing. Offers of settlement are insufficient proof the debt is being resolved is necessary. An offer without proof of payment in compliance with that offer fails to prove the debt is being addressed.

The mitigating conditions listed in ¶ 20(d), applies to the seven delinquent accounts Applicant has paid. However, the majority of his delinquent debt remains unpaid. He has failed to show he has initiated a good-faith effort to repay overdue creditors or otherwise resolve these remaining debts. Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.

In evaluating Applicant's remaining delinquent accounts the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." An applicant is not required to establish that he has paid off each debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The entirety of an applicant's financial situation and actions in evaluating applicant's plan for the reduction of his outstanding indebtedness must be considered. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. A reasonable plan (and concomitant conduct) may provide for the payment of 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.

Applicant has failed to establish he has taken significant actions to implement the repayment plan as to his student loans. Additionally, his \$24,926 loan obligation remains unpaid. He believes the passage of time prevents the creditor from suing him on his debt. He has failed to establish recovery of the delinquent account is so barred.

Applicant's financial problems have continued for several years. In December 2009, he was interviewed about his delinquent accounts. In the 16 months from the interview until the hearing, he had paid approximately \$2,500 addressing two of the



SOR debts. He should have been more diligent and made greater efforts to resolve his delinquent debts. He has failed to carry his burden of proving his financial responsibility. Based on my evaluation of the record evidence as a whole, no mitigating conditions fully apply to the remaining delinquent financial obligations.

### **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. In 2005, all of his debts, with the exception of his two car loans, were discharged. Within five years of that discharge, he had incurred more than \$51,000 in delinquent accounts. He addressed seven of the debts by paying approximately \$6,000. The \$16,000 in student loans debt and the approximately \$25,000 loan remain unpaid. Of course, the issue is not simply whether all his debts are paid—which they are not—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) It is the three unaddressed debts which provided concern.

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 presently 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, at this time, 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**

|                            |                   |
|----------------------------|-------------------|
| Subparagraphs 1.a – 1.c:   | For Applicant     |
| Subparagraphs 1.d and 1.e: | Against Applicant |
| Subparagraphs 1.f – 1.h:   | For Applicant     |
| Subparagraph 1.i:          | Against Applicant |
| Subparagraphs 1.j and 1.k: | For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge