



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



In the matter of:)
)
) ISCR Case No. 10-06044
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The vehicle repossession debt and 13 charged-off or collection accounts alleged in the Statement of Reasons (SOR), totaling more than \$50,000, have been not been resolved. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 26, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On October 19, 2012, Applicant answered the SOR and requested a hearing. On March 20, 2013, I was assigned the case. On April 10, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing for the hearing convened on April 23, 2013. I admitted Government’s Exhibits

¹ 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) effective within the DoD on September 1, 2006.

(Ex) 1 through 8 and Applicant's Exhibits A through C, without objection. Applicant testified on his own behalf. The record was held open to allow Applicant to submit additional information. Additional material (Ex. D) was submitted and admitted into the record without objection. On April 30, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 31-year-old simulation technician who has worked for a defense contractor since June 2011, and seeks to obtain a security clearance. Applicant served in the U.S. Army from April 2001 through April 2005. He served in Iraq from January 2004 through January 2005. He was a specialist four (E-4) when he received his honorable discharge. He receives \$527 monthly disability payments from the Department of Veterans Affairs. (Tr. 64) His wife is a head start mentor with an annual salary of \$20,000. (Tr. 24) He has three children ages 8, 10, and 12. (Tr. 17) His annual salary is \$47,000 to \$48,000. (Tr. 24)

Applicant testified and called no other witnesses. He provided two letters of character reference. Applicant's co-worker and supervisor state: Applicant is an intelligent, capable, and dedicated individual who handles situations with thoughtfulness, integrity, and maturity. (Ex. A and B, Tr. 38)

Applicant has had numerous periods of unemployment. He works on contracts and when the contracts end so does his employment. From May 2005 until June 2006, he was unemployed. (Ex. 4) During this period, he was a full-time student and collected unemployment compensation. (Ex. 4) From January 2007 through November 2008, he was unemployed. (Ex. 4) From October 2009 through December 2009, he was unemployed when the contract he was working on ended. (Ex. 4) He collected unemployment compensation during this period. In January 2010, he was unemployed for eight months. In June 2011, he obtained his current job. In October 2011, he separated from his wife, and he had to rent his own apartment. (Tr. 46)

Applicant attended community college from August 2005 through August 2007 and state university from June 2008 through December 2008. (Tr. 22) His schooling was partially paid for by the G.I. bill. He incurred a debt to the school (SOR 1.a) when he failed to pay the school from the payments he received.

In July 2009, Applicant contacted Consumers Credit Counseling Service (CCCS) for assistance with his delinquent accounts. (Ex. 3) As of July 2009, his monthly net remainder (monthly income less monthly expenses and debt payment) was \$119. (Ex. 3) When he was out of work, he was unable to make payments to CCCS. (Tr. 40) In January 2013, Applicant sought the assistance of a credit service for which he pays \$216 monthly. (Tr. 55) He has met with the counselor three or four times, and two or three times a month Applicant sends correspondence to the counselor that he has received from his creditors. (Tr. 57) The credit service counselor said Applicant hoped

to enter into a credit counseling plan to settle his valid debt and hoped to complete the process by January 2014. At some future date, Applicant will make \$500 monthly payments to the credit service, which will be divided and sent to Applicant's creditors. (Tr. 55) Applicant has considered getting a second job and has made application for work in several places. (Tr. 70)

In mid-2011, Applicant had \$2,600 in unexpected engine repairs. (Tr. 40, 41) In early 2012, he experienced \$2,200 in transmission repairs to this 2000 car. (Tr. 40) In May 2012, he had gallbladder surgery and was out of work, without pay, for two months. His portion of the treatment cost, following payment by his insurance provider, was \$4,000 to \$5,000, which he has yet to address. (Tr. 41-42)

In February 2009, Applicant was asked about his delinquent debts during a personal subject interview. (Ex. 3) In December 2010 and February 2011, he was asked about his delinquent debts in additional personal subject interviews. (Ex. 4)

The SOR alleges a \$7,704 collection account (SOR 1.j). This account appears on his August 2012 credit bureau report (CBR) as seriously past due. (Ex. 4) There are two derogatory entries for May 2012 and August 2012. There is no other record of payment on that CBR. The debt is not listed on the earlier CBR reports of January 2009 (Ex.5), December 2010 (Ex. 6), October 2011 (Ex. 7), or June 2012. Nor was he asked about it during the written interrogatories, the latest of which was dated August 2012.

A summary of Applicant's collection accounts, charged-off accounts, and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	University collection account for 2006 student loan.	\$3,742	Unpaid. In Applicant's interviews in December 2010 and February 2011, he stated he planned to pay half of the debt, which would reinstate his financial aid and allow him to return to school.
b	Medical account debt from emergency room treatment.	\$192	Unpaid. Applicant said he was going to make a payment on August 24, 2012. (Ex. 4) No payment was made, and he has not recently talked with the creditor.
c	Medical account debt from emergency room treatment.	\$210	Unpaid. Applicant said he was going to make a payment on August 24, 2012. (Ex. 4) He was asked about this debt during his February 2009 personal subject interview. (Ex. 3)

	Creditor	Amount	Current Status
d	Cable account collection account for the last two months of service. (Ex. 4)	\$452	Unpaid. In his February 2009 statement, he said almost immediately after getting cable he knew he could not afford it. (Ex. 3) In his interviews in December 2010 and February 2011, he stated he planned to pay this debt within the next six months. (Ex. 4)
e	Telephone collection account. In 2011, he had lost his job.	\$995	Unpaid. In August 2012, the creditor offered to settle this debt for \$746. (Ex. 4, Tr. 29) He did not recognize this debt when asked about it during his February 2009 personal subject interview. (Ex. 3)
f	Collection account possibly used to buy college books. (Tr. 31) He was laid off from work in 2008.	\$683	Unpaid. Applicant's was asked about this debt during his December 2010 and February 2011 interviews. Since it was charged off he did not intend to pay it unless he had to. (Ex. 4) He stated he was going to pay the balance of this debt in August 2012. (Ex. 4) He was asked about this debt during his February 2009 personal subject interview. (Ex. 3)
g	Collection account for the debt from a voluntary repossession of a Ford truck. (Tr. 31)	\$27,878	Unpaid. Applicant had purchased the vehicle for \$27,000 with \$488 monthly payments. (Ex. 3, Tr. 31) Two weeks after purchasing the vehicle the contract he was working on ended. He maintained payments for about a year before returning the vehicle. (Ex. 4, Tr. 32) He was asked about this debt during his February 2009 personal subject interview. (Ex. 3)
h	Credit union charged-off account. Applicant's checking account was overdrawn by \$100. (Tr. 33)	\$113	Unpaid. Applicant was unsuccessful in his attempts to settle this debt with the credit union. In his interviews in December 2010 and February 2011, he stated he planned to pay this debt within the next three months. (Ex. 4)
i	Vehicle repossession. This vehicle had engine problems. (Tr. 34-35)	\$8,050	Unpaid.

	Creditor	Amount	Current Status
j	Collection account.	\$7,704	Applicant is unable to recall this account. First derogatory information was in May 2012. He and his credit counselor are investigating this debt. (Tr. 35)
k	Credit card collection account.	\$662	Unpaid. Applicant had obtained a credit card, which he intended to use for emergencies. He obtained it just before his job ended in 2008. (Tr. 36) He was asked about this debt during his February 2009 personal subject interview. (Ex. 3)
l	Video store collection account.	\$99	Unpaid. Applicant is attempting to have this debt and the following two debts removed from his CBR because the store is no longer in business. Applicant was unsure this was his debt.
m	Video store collection account.	\$99	See L above.
n	Video store collection account.	\$351	See L above.
	Total debt listed in SOR	\$50,634	

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 (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.

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 has had two vehicle repossessions and has numerous delinquent, charged-off or collection accounts, which total in excess of \$50,000. 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.

Applicant does not fully meet any of the financial considerations mitigating factors. He would like to pay his delinquent accounts, but is not in a position to do so. In early 2013, he sought the services of a credit service. However, in 2009, he contacted CCCS and was not able to pay his bills with that service. Although currently working with the credit service, he has yet to make monthly payments to the service that will be distributed to his creditors.

Applicant's financial difficulties are both recent and multiple. AG ¶ 20(a) does not apply. He has experienced periods of unemployment, vehicle repair bills, medical surgery, and in 2011 separated from his wife, which were all events beyond his control. However, he was first questioned about the majority of these delinquent accounts in February 2009. Four years after being interviewed the debts remain. Even the five that are less than \$200 each have yet to be addressed. Little has been done to address the delinquent debts. He has not demonstrated that his financial problems are under

control, or that he has a plan to bring them under control. It is too speculative to conclude the credit service will be able to address his delinquent obligations when he has yet to make his first payment that would go to paying his creditors. AG ¶ 20 (b) does not fully apply.

Under AG ¶ 20(c), there is no evidence Applicant has received current counseling or that there is a clear indication that the problem is being resolved or is under control. The counseling he has received to date has had little effect on his finances. AG ¶ 20(c) does not fully apply. Under AG ¶ 20(d), he has made no payments on the delinquent obligations nor has he reached a repayment plan with his creditors. AG ¶ 20(d) does not apply. AG ¶ 20(e) does not apply because he has admitted all of the debts except for SOR 1.j, which he and his credit service counselor is investigating.

The video store related to the debts in SOR 1.l (\$99), SOR 1.m (\$99), and SOR 1.n (\$351) is no longer in business and Applicant has no method to verify these debts or establish a repayment arrangement. I find for him as to these three debts.

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.

The potentially disqualifying and mitigating conditions have been considered in light of all the facts and circumstances surrounding this case. There is some evidence in favor of mitigating Applicant's conduct. He went through several periods of unemployment, he separated from his spouse, and he also underwent surgery. However, he was first asked about his delinquent obligations more than four years ago, which was prior to his surgery and some of his unemployment.

The disqualifying evidence under the whole-person concept is more substantial. While the periods of unemployment as well as the surgery, were circumstances beyond his control, he either had no ability or intention of paying his delinquent accounts. It has been more than four years since first questioned about his financial problems. He has

failed to document any payments on his delinquent accounts. 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.

The issue is not simply whether all 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 would like to pay his delinquent debt, but he has not.

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 recommended, but 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, a clearance at this time is not warranted.

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 his 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
Subparagraphs 1.a – 1.k:	Against Applicant
Subparagraphs 1.l – 1.n:	For 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge