



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



In the matter of:)	
)	
)	ISCR Case No. 11-02797
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has three unpaid tax liens entered against him totaling approximately \$6,000, and six delinquent accounts totaling approximately \$32,000. These delinquent debts remain unpaid. Applicant has failed to rebut or mitigate the financial considerations security concerns. Clearance is denied

Statement of the Case

Applicant contests the Department of Defense’s (DoD) intent to deny 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 January 11, 2012, 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 (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.

On February 16, 2012, 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 April 2, 2012. The FORM contained 12 attachments (Items 1–12). On April 12, 2012, 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. Applicant's response was due on May 12, 2012. No response to the FORM was received. On June 20, 2012, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied the debt listed in SOR 1.b and admitted the remaining debts. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 44-year-old manufacturing technician who has worked for a defense contractor since March 2007. He is seeking to keep a secret clearance. (Item 5) In July 2006, he retired from the U.S. Navy after 20 years of honorable service. (Item 6) From June 2006² to August 2006 and November 2006 through March 2007, he was unemployed.

In September 2005, Applicant received a Letter of Intent (LOI) to Deny Security Clearance due to financial considerations security concerns. (Item 12) The SOR accompanying the LOI listed: a voluntary repossession on a van purchased in 1995 and two additional vehicles returned to the creditor, which resulted in a debt owed the creditor. In January 2006, a favorable security clearance determination was made.

While in serving in the U.S. Navy and while his wife was working full time, Applicant and his wife purchased two new cars. Following his retirement and his wife being laid off from work, the cars were voluntarily repossessed. Following their sales, he was informed he owed \$14,137 on one vehicle and \$3,421 on the other. (Item 5) Applicant asserts the debts (SOR 1.f, \$25,000 and SOR 1.h, \$3,421) were being paid by a direct debit from his monthly pay. (Item 6) His November 2011 pay stub shows a single payment. (SOR 7) The pay stub does not list a year-to-date amount, which indicates the November 2011 payment by garnishment was the first garnishment payment of the year.

In January 2011, Applicant was interviewed concerning his delinquent accounts. (Item 6) He did not know why a delinquent medical bill (SOR 1.b, \$1,106) appeared on his credit bureau report (CBR) because he had health insurance coverage through the military following his retirement. (Item 6) At the time of the interview, he was meeting his financial obligations and working to pay his past debt. (Item 6)

In November 2011, Applicant completed written interrogatories concerning his finances. (Item 7) At that time, he had \$3,359 in net monthly income, \$2,500 in monthly

² Applicant was unemployed while on terminal leave from the U.S. Navy. (Item 6)

expenses, was making \$700 in debt payments, which left a net remainder of \$154. He indicated he had made a \$50 monthly payment to the original creditor listed in SOR 1.g. (Item 7)

Applicant acknowledged a \$1,046 debt (SOR 1.a) for physical therapy following a car accident. In November 2011, he made a \$50 payment³ on this debt. (Item 7) Applicant took \$10,000 from his 401(k) retirement fund to pay his daughter's first year of college. The withdrawal generated additional taxes, which resulted in three income tax liens (SOR 1.c, \$1,764; SOR 1.d, \$1,505; and, SOR 1.e, \$2,554). (Item 6, 8)

A summary of Applicant's SOR accounts follows:

	Creditor	Amount	Current Status
a	Collection account. This debt was for physical therapy following a car accident. (Item 7, 8, 9)	\$1,046	Applicant asserts he is making payment on his account. (Item 4) In November 2011, he sent a \$50 payment. (Item 7)
b	Indebted on a medical bill. (Item 8, 9, 10)	\$1,016 ⁴	Applicant denies this debt and has no knowledge about it. (Item 4)
c	State tax lien filed in November 2010. (Item 8, 9, 10)	\$1,764	Applicant asserts his wife's disability is being garnished to pay this debt. (Item 4)
d	State tax lien filed in August 2009. (Item 8, 9, 10)	\$1,505	Applicant asserts his wife's disability is being garnished to pay this debt. (Item 4)
e	State tax lien filed in August 2009. (Item 8, 9, 10)	\$2,554	Applicant asserts his wife's disability is being garnished to pay this debt. (Item 4)
f	Charged off account. (Item 8, 9)	\$25,000 ⁵	Applicant asserts his check is being garnished to pay this debt. (Item 4)
g	Collection account. (Item 8, 9, 10)	\$1,463	Applicant asserts he is making payment on his debt. (Item 4) Applicant enclosed a copy of the front of a \$50 check dated November 2011 payable to the original creditor and not to the collection agency.

³ In Applicant's response to the SOR, he included the front side of four checks in the amounts of \$30, \$50, \$50, and \$100. (Item 4)

⁴ The SOR lists this debt as \$1,106, however all three of the CBRs list it as \$1,016. (Items 8, 9, 10)

⁵ Applicant's December 2010 CBR lists the balance on this debt as \$14,137. (Item 10) However, his January 2012 CBR lists \$26,542 as past due. (Item 8)

	Creditor	Amount	Current Status
h	Collection account. (Item 8, 10)	\$3,421	Applicant asserts his pay is being garnished to pay this debt. (Item 4)
i	Charged-off automobile account with the same creditor listed in SOR 1.h. (Item 8)	\$254	Applicant asserts this debt was paid in full, but provided no documentation supporting his assertion. (Item 4)
	Total debt listed in SOR	\$38,032	

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.

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 to meet his financial obligations.

Applicant has a history of financial problems. In 2005, he received a LOI to deny his clearance due to financial consideration security concerns. In January 2006, his clearance was granted. His financial problems continued and he has three unpaid tax liens and six delinquent charged-off or collection accounts, which together total approximately \$38,000. 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.”

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and did not occur under circumstances

not likely to recur. He failed to demonstrate that his debts were largely due to circumstances beyond his control, or that he has acted responsibly in addressing his debts. Further, there is no evidence of credit counseling, or that his financial problems are under control. I conclude Guideline F against Applicant.

Since January 2011, when Applicant was interviewed concerning his finances, he asserts the two debts that arose following the repossession of two vehicles are being paid by garnishment on his pay. He documented only a single payment shown on his November 2011 pay stub. He failed to document any additional payments. He asserts the three tax liens are being paid from his wife's disability pay, but he provided no documentation supporting his claim. In November 2011, he sent \$50 to each of two accounts.

Applicant has provided no documentation he has resolved his debts. The mere assertion that money is being withheld from his pay and his wife's disability pay, without supporting documentation, is insufficient proof the delinquent accounts are being paid.

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, financial considerations security concerns caused an SOR to be issued to Applicant. In January 2006, he was granted a clearance, but the process should have put him on notice of the government's concern over his finances.

Applicant denies one medical debt and admits the remaining SOR debts and claims he is making payments on the debts or his pay is being garnished to address the delinquent debts. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his

circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain.

Based on the totality of the evidence available in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. He has provided no documentation that he has taken effective action to resolve his debts. Nor is there evidence he has equipped himself to avoid financial problems in the future. 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.i: 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 national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge