



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



In the matter of:)	
)	
)	ISCR Case No. 11-03705
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: Ernst M. Martzen, Esq.

04/23/2013

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. Applicant was \$26,000 past due on two mortgages and owed an additional \$5,000 in collection or charged-off accounts. He has paid his past due debts and brought his mortgages to current status. He has resolved the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 12, 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 10, 2012, Applicant answered the SOR and requested a hearing. On January 9, 2013, I was assigned the case. On February 5, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the

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.

hearing convened on February 26, 2013. I admitted Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibit A with attachments 1 through 25, without objection. Applicant testified at the hearing as did his wife. The record was held open to allow Applicant to submit additional information. Additional material (Ex. B through D²) was submitted and admitted into the record without objection. On March 7, 2013, DOHA received the hearing transcript (Tr.).

Procedural Matters

Department Counsel (DC) requested that the debt amount listed in SOR 1.e be changed from \$69 to \$56. (Tr. 7) Applicant's counsel objected stating a search for the \$69 medical bill had been made, which was unsuccessful. DC asserted Applicant should have known of this \$56 debt because he was asked about a debt of that amount in the November 2010 written interrogatories, which he answered. (Ex. 3) The change was not allowed, but DC was informed he would be allowed to argue Applicant should have known of this debt.

Findings of Fact

In Applicant's Answer to the SOR, he denied the allegations at SOR 1.a, 1.f, 1g, and 1.h. He neither admitted nor denied the debt listed at 1.e (\$69). He admitted the remaining debts, with explanation. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 61-year-old aerodynamicist who has worked for a defense contractor since March 1983, and seeks to maintain a security clearance. (Tr. 11, 99) He has more than \$520,000 in his 401(k) retirement plan and \$10,000 in his checking account. (Ex. A-21, Ex. A-24, Tr. 106) In April 1977, Applicant married, and he and his wife had five children before two died. He and his wife own six rental properties in addition to their home. (Tr. 83) He has more than \$80,000 in equity in his rental property. (Ex. B) Applicant asserts his financial problems resulted from medical expenses and failures of the tenants to meet their obligations. He was initially unaware of the problems because his wife manages the household's finances. (Tr. 11, 80-81))

In 1977, Applicant and his wife purchased their first rental home. (Tr. 21) Three years later, they built their home. (Tr. 22) Their goal was to purchase rental real estate for each of the children, pay off the property, and by the time the children were in college they could use the rental income for college expenses. (Tr. 22) Following college, the plan was then to sell the home or give the home to each child when he married. The rental property generated good cash flow. (Tr. 23) The monthly mortgage payment is approximately \$5,400 and their monthly income from the properties is \$7,600. (Tr. 85)

In April 2003, when Applicant's third son was a college freshman, it was discovered he had a brain tumor. (Tr. 25) Applicant and his wife had good medical

² The last material (Ex. D) was received on April 8, 2013.

insurance, but traditional medicine offered little hope. They chose to seek medical treatment at a cancer facility. (Ex. A-12) The treatment was considered experimental and the insurance company would not pay except for incidental expenses. (Tr. 25) Although Applicant had a significant 401(k) retirement fund, he was unable to borrow from the fund because he already had a loan from the fund. (Tr. 15) He and his wife refinanced some of their real estate and sold two rental homes to obtain funds for the treatment. (Tr. 25, 28) One medical bill was \$30,000 and other medical bills kept coming after their son died. (Tr. 27)

Applicant also used his credit cards to meet medical expenses and incurred a \$10,000 debt on one card. (Tr. 27) When the credit cards were used for medical bills, he assumed the bills would be paid following the sale of a house. (Tr. 28) This was the first time in his marriage that he was experiencing financial problems. (Tr. 29) He was able to maintain payment on the rental properties and was negotiating with the credit card companies. (Tr. 30) The plan was to address a credit card debt fully before addressing the other debt. (Tr. 31)

When Applicant's youngest son was a high school freshman, he began having problems in school. (Tr. 31) He had suffered a severe head injury while skateboarding, which greatly altered his personality. (Tr. 32) He started skipping school and became involved with illegal drugs. A treatment program was found to help his son with his problems. Applicant's insurance company stated it would pay 70 percent of mental health treatment at an inpatient facility. (Tr. 34) However, the insurance company later denied³ coverage for the treatment. (Ex. A-19) Applicant also used money he had set aside to make balloon payments on his real estate. He chose to use the money to pay for his son's treatment. (Tr. 34)

Following the death of his grandfather, Applicant's son's mental problems increased due to schizophrenia or drug-induced psychosis. (Tr. 39) His son was improving until June 2011, when his brother died in an aircraft crash. (Ex. A-11, Ex. A-13, Tr. 11, 13, 30, 40) Applicant's youngest son was present when his older brother died in the plane crash and was asked to help remove his brother's body from the wreckage. This event impacted greatly on his younger son's mental state. His youngest son's drug addiction became worse following his brother's death. His son was committed for one week of treatment due to the danger of possibly harming himself. (Tr. 41) His son's medical condition caused significant medical expenses. (Tr. 42) His son's condition has now improved, but his son still has memory problems. (Tr. 42) He has stopped using illegal drugs. (Tr. 43)

While Applicant's son was in treatment, he missed six weeks of school. The school district where they lived had no way to address the missed schooling, but another school had an accelerated recovery program. (Tr. 36) Applicant rented a home in the school district with the program and attempted to sell his home. (Ex. A-14, A-15,

³ After a year of trying to obtain the promised payment, an external review determined the insurance company had misled Applicant and should have stated that pre-approval was necessary. Due to the misleading statement, the insurance company paid half of the treatment cost. (Tr. 36)

Tr. 14, 37) Their home remained on the market for more than one year. He and his wife eventually moved from the rental property back into their main home. (Tr. 14)

Starting in September 2010, Applicant began experiencing problems with the tenants in his rental property. That month, he had to evict tenants in one property for nonpayment of rent and theft of stored furniture. (Tr. 44) Following eviction, he discovered the tenants had trashed the home, spray-painted the window and furniture, and taken the appliances. (Tr. 44) He kept making the mortgage payments and attempted to rent the property. In October 2011, it finally rented. (Tr. 45)

In another rental house, in September 2010, the tenant got behind on the rent following the death of her husband. (Tr. 47) Starting in February 2010, the tenants could only pay \$600 of the \$1,350 monthly lease. The monthly mortgage on the property was \$1,100. (Tr. 49) In September 2011, the tenant was evicted. (Tr. 48) Cleaning and fix-up costs were incurred. In December 2011, the house rented. On occasion, tenants would leave without paying the last month of various utility bills. (Tr. 61) Applicant would then have to pay the bill (SOR 1.a, \$69), which he did in January 2013. (Ex. A-5, Tr. 61, 115) Judgments have been obtained against some of the former tenants, but he has not pursued collection due to the financial status of the former tenants. (Tr. 90)

Over the years, Applicant obtained a number of loans from his credit union. The loans were timely paid. Sometimes loans were obtained to fix up their rental properties. A \$3,371 loan (SOR 1.b) was obtained for this purpose that had been charged off and has now been settled and paid. (Ex. A-2, Ex. A-24, Tr. 62, 65)

In September 2010, Applicant applied for mortgage loan modifications. (Tr. 50) He attempted to use the Home Affordable Modification program (HAMP). (Tr. 51) To qualify for HAMP, the mortgage had to be two months past due. He found it counterintuitive to fall behind on his payments in order to qualify, but made the decision to do so in order to qualify. (Tr. 52, 104) In November 2011, he became eligible to apply for loan modification. (Ex B, Tr. 54) Pursuant to the program, the creditor paid the tax loans on the properties, loans that were not in default. (Tr. 57) The monthly payment had been \$2,400. The creditor wanted him to pay the \$2,400 monthly, with an additional \$3,000 monthly for the tax escrow account. (Tr. 58) In retrospect, applying for the loan modification was a mistake. (Tr. 59) Instead of lowering their monthly payment, the amount doubled.

In October 2011, Applicant hired a nonprofit organization to assist him because the bank (SOR 1.c, \$16,588 past due) kept losing the loan modification documents he sent. (Tr. 60-61) Between November 2011 and February 2012, the bank reassigned the loan several times between their legal department and the loan modification department. (Tr. 66) Finally, a bank employee was assigned the case and approved the loan within two weeks. (Ex. A-3, Tr. 67) Applicant started making the required monthly payments. He had a similar experience with an additional mortgage (SOR 1.d, \$9,421 past due). He has a repayment plan and is making his payments. (Ex. A-4, tr. 68)

Applicant disputed a telephone company bill. He was told there would be no charge for local long distant calls, but received a large bill for such calls. (Tr. 70) He

disputed the amount with the company stating he did not receive what he had been promised. He has paid this bill. (Ex. A-23)

In September 2012, Applicant hired a credit repair company to assist him in tracking down and paying his debts. (Ex. A-8, SOR Answer, Tr. 71, 117) When the company verified the debt, Applicant would then pay it. (Tr. 115) The company's search was unable to locate any debt of \$69 owed on a medical account (SOR 1.e). (Tr. 72) The debt does not appear on his current credit report. Applicant's wife called the creditor listed in SOR 1.g (\$268) and was told the company's records listed no account for Applicant. (Tr. 71) If he could verify he owed this debt, he would pay it. (Tr. 108)

Applicant initially disputed a \$60 medical debt (SOR 1.h), but paid it. (Ex. A-5) He was billed \$35 when his son failed to show up for a dermatologist appointment. (Tr. 73) However, his son had a different dermatologist and never had an appointment with the doctor's office charging the fee.

Applicant incurred a \$690 timeshare maintenance fee (SOR 1.i). With his son's medical expenses, the fee went unpaid. (Tr. 75) The fee has now been paid. (Ex. A-6) Applicant's wife paid off a \$9,182 credit card debt and closed the account. (Tr. 77) Upon closing the account the creditor charged \$210 (SOR 1.j). The amount has now been paid. (Ex A-7, A-22, Tr. 105) He was unsuccessful in his attempt to identify a \$69 medical debt (SOR 1.e). (Tr. 108) The SOR alleged the account is owed, but does not allege it is past due or in collection.

Applicant does not believe he will have financial problems in the future because he is 61 years old, which allows him to withdraw from his 401(k) plan without paying a penalty. (Tr. 125) He has been working for the company since March 1983. He has recently received a promotion with an additional \$8,000 annual salary. (Tr. 127) His rental properties are in good shape and are currently rented. He and his wife have 2005 vehicles, which are paid off, as is their son's 2003 vehicle. (Tr. 125)

Applicant's co-worker states Applicant is trustworthy, has high moral and ethical character, and is a man of strong faith. (Ex. A-17) He received a \$3,000 individual achievement award for this 2012 work. (Ex. A-20)

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	Electricity utility charged-off account.	\$69	Paid. (Ex. A-1)
b	Credit union charged off account.	\$3,371	Settled and paid. (Ex. A-2, A-24)
c	Mortgage \$16,588 past-due on a balance of \$253,000.	\$16,588	Loan modification. Paying as agreed. (Ex. A-3)

	Creditor	Amount	Current Status
d	Mortgage past-due \$9,421 on a balance of \$101,000.	\$9,421	Being paid. (Ex. A-4, A-7)
e	Unpaid medical account.	\$69	Applicant is unable to locate the holder of this debt.
f	Telephone service collection account.	\$169	Paid. (Ex. A-23)
g	Collection account. Applicant believes it to be a scam and a fraud.	\$268	Applicant disputes this account.
h	Unpaid medical account.	\$60	Paid. (Ex A-5)
i	Time share fees collection account.	\$690	Paid. (Ex A-6)
j	Charged-off account; \$210 charged after Applicant paid \$9,182 and closed the account.	\$210	Paid. (Ex A-7, A-22)
	Total debt listed in SOR	\$30,915	

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 *a/so* 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 following the death of his oldest son and the medical treatment of his youngest son. He was \$26,000 past due on two mortgages and owed approximately \$5,000 on other 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.

Following the death of Applicant's oldest son and after his youngest son experienced head injuries in a skateboarding accident, his youngest son required medical treatment. His insurance initially said it would pay 70 percent of the treatment cost, later denied coverage, and then after more than a year, was required to pay half of the cost. Applicant was unsuccessful in his attempts to sell some of his rental property to meet the medical expenses. He also borrowed against the properties and on his credit cards to pay for the treatment. He has repaid all monies borrowed on his credit cards for medical treatment.

Following his son's treatment, Applicant moved to a new school district to assist his son in making up the time lost. He rented a home in the new school district and attempted to sell his home. He was unsuccessful in his attempts at sale. Maintaining his home mortgage and renting a house in the new school district added to his financial problems, as did some problems with various tenants on his rental property. His attempt to refinance some of his mortgages met with mixed results. He was able to renegotiate two loans, which required him to be two months or more past due on the loans to qualify. Even though he found this to be counterintuitive, he allowed the two mortgages to become past due.

Additional problems with the loan were created by the long processing time to obtain the modifications and due to the bank paying off a \$30,000 tax liability, which was added to his monthly repayment amount. Instead of lowering the monthly payment amounts, these amounts increased with the addition of the tax liability repayment.

The two past-due mortgages are now current and the majority of Applicant's other debt has been paid. He disputes one debt (SOR 1.g, \$268) and has been unable to locate a medical debt (SOR 1.e, \$69) The size of these two obligations is so small they do not raises concerns about his current reliability, trustworthiness, or good judgment. He has \$10,000 in his checking account and more than \$500,000 in his 401(k) retirement account.

Applicant's financial difficulties resulted from circumstances beyond his control, and he acted responsibly in addressing his debts. In 2003, Applicant's middle son died of brain cancer. In 2011, his oldest son died, which greatly affected his youngest son's mental state. His youngest son required medical treatment not covered by Applicant's insurance and Applicant changed school districts to aid his son, which increased his monthly expenses when he rented a house in the new school district and was unable to sell his home. The financial difficulties were incurred under unusual circumstances unlikely to repeat themselves. AG ¶ 20(a) applies. Not only the medical treatment costs, but also his inability to sell his home, were factors beyond his control. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid six of the debts and brought his two past-due mortgages current. He and his wife drive 2005 vehicles. He is living within his means, paying his debts, has received an increase in salary, and paid his credit card accounts used to pay for medical treatment. AG ¶ 20(c) and ¶ 20(d) apply.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The majority of his unaddressed financial obligations resulted from medical treatment costs and being past due on two mortgages in order to qualify for loan modifications.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Applicant has paid his debts and is current on his mortgages. He has more than \$80,000 equity in his six rental properties, has more than \$500,000 in his retirement account, and \$10,000 in his checking account. He has had steady employment with his company for 30 years, received a \$3,000 award for his work last year, and has recently been promoted with an \$8,000 annual increase in his salary.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
Subparagraphs 1.a –1.j:	For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge