



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



In the matter of:)
)
) ISCR Case No. 11-06236
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has approximately \$350,000 in delinquent debt. He 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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on October 12, 2011, 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 November 8, 2011, Applicant answered the SOR and requested a hearing. On March 12, 2012, I was assigned the case. On April 24, 2012, DOHA issued a Notice of Hearing for the hearing held on May 8, 2012.

The Government offered exhibits (Ex.) 1 through 13, which were admitted into evidence without objection. Applicant testified, but submitted no exhibits. The record was held open to allow Applicant to submit additional information. On May 11, 2012, and May 18, 2012, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. A. and B. On May 14, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he disputes the debts listed in SOR 1.a, 1.b, and 1.e, which total approximately \$1,600. He admits the remaining debts. His admissions are incorporated herein. After a thorough review of the pleadings, exhibits, and testimony I make the following findings of fact.

Applicant is a 49-year-old instructor who has worked for a defense contractor since October 2009. (Tr. 39) In February 2007, Applicant retired as a first sergeant (E-8) after 26 years of honorable service in the U.S. Army. His initial disability² was rated at 70 percent, but is now 90 percent. (Tr. 65) In 2007, both Applicant and his wife became ordained pastors. From April 2008 through October 2009, he was unemployed and lived on his military retirement and disability pay. (Ex. 5) Applicant called no witnesses other than himself, and produced no work or character references.

Applicant owed \$24,000 on a credit card (SOR 1.f). Since May 2011, he has been making \$200 monthly payments on the debt. With his SOR answer, he provided documentation of \$200 payments in July, August, September, and October 2011. (Tr. 13) In 2007, he opened a credit card account and used it to support his family. (Ex. 5) He is making \$200 monthly payments toward obligation (SOR 1.h, \$14,161) Again, with his SOR answer, he provided documentation of \$200 payments in July, August, September, and October 2011. (Tr. 13) Three credit bureau reports (CBR) were submitted by the Government: April 2001 (Ex. 2), February 2001 (Ex. 4), and July 2011 (Ex. 6)

In June 2005, Applicant and his wife divorced. His ex-wife receives 20 percent of his military retirement pay. (Ex. 5) He pays \$50 monthly child support. In August 2005, Applicant remarried. In July 2005, he was introduced to an investment group (Group) that promised participants that they would be debt-free within 18 month. (SOR Answer) The organization was a Ponzi scheme³ that targeted military members. He stated he

² Applicant has had three foot operations, a knee operation, problems with his hip, lower back, neck and head, all associated with parachute jumping while in the Army. (Tr. 66)

³ The Group was a Ponzi scheme that tried to disguise itself as a religious, charitable program of debt elimination. (Ex. 7) The Group asserted they were making money in foreign currencies. (Tr. 57) In November 2009, the three owners of the Group were convicted in federal court and ordered to forfeit \$82

lost approximately \$260,000 in the scheme. (Ex. 3, 5) Before the plan was shut down, the plan paid Applicant's mortgage (\$220,000), credit card debt (\$30,000), his pickup truck (\$14,000), his wife's sports utility vehicle (SUV) (\$55,000), he received an \$8,000 check, and \$1,500 monthly payments for 15 months (\$22,500). (Tr. 50, 52, 56) The Group plan payment amounts total approximately \$350,000. He never submitted a claim for reimbursement from the court. (Tr. 31) He stated:

I thought that I was like, you already got a little bit from what – kind of like broke even, sir. That's what I thought. So, thought I didn't need to put a claim in. (Tr. 72)

In October 2006, Applicant cosigned, with a pastor, on a \$40,000 vehicle loan. The pastor was to make the monthly payments, which he failed to do. For over a year, Applicant made the \$820 monthly payments on the vehicle. (Tr. 33) In 2008, the vehicle was repossessed, resold, and \$26,620 is yet owed on this debt (SOR 1.i) Applicant intends to pay this debt, but it will be one of the last he pays. (Tr. 33) Additionally, Applicant and his wife gave the ministry \$100,000. (Tr. 35) The minister's car and \$350,000 home were put into the Group plan. In March 2007, they invested \$77,000 in the plan, which was to provide the minister a \$7,000 monthly payment. (Tr. 35) SOR Answer) At the time of these gifts, Applicant had anticipated monthly income of \$22,000 following his retirement and participation in the Group plan. (Tr. 43)

Applicant and his wife invested in the Group and within nine month began to receive monthly residual payments. In October 2006, his credit card debt, which was around \$30,000, was satisfied. In November 2006, his pickup truck was paid off by the Group. (SOR Answer)

Applicant placed his home in the plan with the organization and a year and a half later, in March 2007, Applicant's mortgage of \$220,000 was paid in full by the Group plan. (Tr. 34) In March 2007, shortly after the mortgage was paid off, Applicant obtained a \$168,000 first mortgage and a \$99,000 equity line. Of the \$267,000, \$100,000 went to the Pastor, \$50,000 went to savings, and \$117,000 was reinvested in the Group plan. (Ex. 4, Tr. 34, 46) In his SOR Answer, he stated he put \$132,000 back into the plan, which was to provide a \$13,200 monthly payment. (SOR Answer)

Applicant continued to borrow money from his credit cards and through signature loans anticipating that his monthly residual payment would cover the monthly payments. In August 2007, Applicant unsuccessfully attempted to discontinue the monthly residual contract. That same month, he moved out of his home. (Tr. 36)

In October 2008, Applicant could no longer make his mortgage payments. The house went to foreclosure and was sold. He is unsure when it was sold, but believes the sale occurred in 2008 and believes the house sold for \$145,000 to \$150,000. (Tr. 37, 72) In his June 2011 response to written interrogatories, he stated he had no additional responsibility on the debt. (Ex. 5) However, at the hearing, he stated "I guess this is

million. Approximately \$20 million was recovered from the Group. The three owners were each sentenced to between 27 and 30 years imprisonment. (Ex. 8)

something I've got to look at in the future . . ." (Tr. 30) He never received any IRS Form 1099-C indicating the lender had forgiven any of the debt. (tr. 37) He has not investigated whether or not the state has an anti-deficiency law concerning foreclosures. (Tr. 37) He has provided no documentation from the mortgage company or the holder of the equity line of credit showing any balance less that the amount he received from the creditors.

On April 4, 2007, Applicant put the pastor's \$350,000 home into a mortgage satisfaction program with the Group, which was supposed to pay the total mortgage in 20 months, on November 20, 2008. (SOR Answer)

In August 2007, the state froze the Group's assets. (Ex. 9) The investment company stopped making residual payments and never resumed. Applicant's finances were depleted that year. From August 2007 to August 2008, Applicant lived rent free with his sister. (Ex. 5, Tr. 23) He has repaid her \$12,000 for allowing him to stay with her. (Tr. 53) From May 2005 through August 2010, he attended university. (Ex. 5) In 2010, he received his bachelor's degree and is pursuing a master's degree in Human Relations.

Applicant asserts all of his utility bills at his previous location were paid when he moved to his new location in 2007 to live with his sister. (Ex. 5, Tr. 30) There is a \$114 bill (SOR 1.b) from his prior city's public works. Although Applicant disputed the bill, he has not contacted the city or the collection agency concerning the debt. (Tr. 30, 38)

Applicant asserts he has "not gotten around" to paying the \$19,000 (SOR 1.c) delinquent account because he does not have a contact point with the collection agency. (Tr. 30) He disputes a \$1,297 telephone debt. He currently has service with the same provider and has disputed it several times on this collection account. (Tr. 31)

In June 2011, Applicant answered written financial interrogatories. (Ex. 5) Applicant's wife does not work outside of the home except for Air National Guard duty one weekend a month. (Tr. 39) She takes care of their autistic six-year-old son. (Tr. 40) Her air guard salary is approximately \$2,000 monthly or \$24,000 annually. (Tr. 40, 67) His annual salary is \$58,700. (Tr. 39) His Army retirement and disability pay after deductions is \$29,000. Their annual combined salary is \$111,700. His 2001 pickup is paid for as is his wife's 2005 SUV. He is current on his \$750 monthly van payments for the vehicle purchased in November 2006. (Tr. 41) He has \$17,000 in his company's 401(k) retirement plan. (Tr. 64)

A summary of Applicant's delinquent accounts and their current status follows:

	Creditor	Amount	Current Status
a	Emergency room treatment for kidney stone. (Ex. 4, 5)	\$215	Unpaid. Applicant has yet to clarify this with TRICARE. (Tr. 30)

	Creditor	Amount	Current Status
b	Collection agency attempting to collect a utility bill. (Ex. 4)	\$114	Unpaid.
c	Collection account. (Ex. 4, 6)	\$19,000	Unpaid.
d	Mortgage foreclosure. (Ex. 4)	\$168,000	Unpaid.
e	Collection account for telephone service. (Ex. 4)	\$1,297	Applicant disputes this debt, but provided no documentation as to his dispute.
f	Credit card collection account. (Ex. 4, 6)	\$24,000	Paying \$200 monthly since July 2011. (Tr. 13) The amount is automatically debited monthly from his checking account. (Tr. 31)
g	Home equity line of credit. (Ex. 4, 6, Tr. 31)	\$99,000	Unpaid. February 2011 CBR lists the balance at \$146,716. (Ex. 4, page 18)
h	Bank account. (Ex. 4, 6)	\$14,161	Paying \$200 monthly since July 2011. (Tr. 13, 32)
i	Repossessed vehicle. (Ex. 4) Cosigned with pastor on car that was later repossessed. (Tr. 32)	\$26,620	Unpaid. February 2011 CBR lists the balance at \$34,341. (Ex. 4, page 16)
j	Timeshare property purchased in 2006 in collection. (Ex. 4, 5)	\$2,744	Paid. Debt settled in November 2011 for \$1,815 and paid in November 2011. (SOR Answer)
	Total debt listed in SOR	\$355,151	

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. Applicant owes more than \$350,000 on nine delinquent accounts. Two of his delinquent debts were under \$250. 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 and his wife's combined annual income is approximately \$112,000. He became aware of the Government's concerns about his finances during a February 2011 personal subject interview and through additional interrogatories in June 2011. In July 2011, he started making \$200 monthly payments each on two debts (SOR 1.f, \$24,000 and SOR 1.h, \$14,161). In November 2011, he settled a timeshare contract (SOR 1.j, \$2,744) for \$1,800.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He owes a large amount of money. He asserts, but failed to document, his house sold for \$145,000 after foreclosure. Even were this to be true, he still has more than \$200,000 in delinquent debt. He has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not paid or investigated two debts totaling approximately \$250. He has not made a good-faith effort to satisfy his debts.

Because Applicant has multiple delinquent debts and 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.

Likewise, Applicant receives partial application of the mitigating conditions listed in AG ¶ 20(b), for he was unemployed for a period of time following his retirement from the Army. However, their current combined annual income is approximately \$112,000 and he is making less than \$5,000 payments a year on two debts.

Applicant became involved in a Ponzi scheme. However, he seems to be one of the lucky few. He asserts he lost approximately \$260,000 in the scheme. However, the Group plan paid his mortgage, credit card debt, pickup truck, his wife's SUV, an \$8,000 payment, and \$1,500 monthly payments for 15 months. These Group plan payment amounts total approximately \$350,000. He never submitted a claim for reimbursement from the court believing what he paid and what he received were close to even. His involvement in the Ponzi scheme added to his financial problems, but does not seem to be the cause of his financial problems. His gifts to the pastor and paying for the pastor's car were not actions beyond his control.

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).

Applicant has been employed since September 2009 which gives sufficient opportunity to address for him to more aggressively pay his financial delinquencies. He did not start making payments on the two debts he is paying until 2011. He has failed to act timely or responsibly under the circumstances. He failed to resolve his debts.

The mitigating condition listed in AG ¶ 20(c) does not apply because Applicant has not received financial counseling and there is no clear indication his delinquent accounts are under control. He has yet to address more than \$200,000 of delinquent debt.

The mitigating condition listed in AG ¶ 20(d) applies to the \$200 monthly payments he is making on the two debts. Applicant denied three debts which totaled approximately \$1,600. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account. Additionally, even if these three debts were found in his favor, he still has more than \$200,000 of unaddressed delinquent debt.

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. Applicant was involved in a Ponzi scheme. It was to repay him at a rate of 10 percent monthly on the amounts he put into the plan. He asserts he lost money with the scheme, but also received some sizable payment from the Group plan. His service to his country while in the U.S. Army is recognized as are the periods of unemployment he experienced after leaving the Army. Additionally, he had good intentions in his gifts to the pastor.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has been employed since 2009. His annual household income is over \$100,000 and his annual payment on SOR obligations is \$5,000. He has failed to contact a number of his creditors and has limited knowledge as to what occurred following the foreclosure of his home. His failure to repay his creditors or arrange repayment 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 is only making payments on two debts.

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, 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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 national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge