



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



In the matter of:)	
)	
)	ISCR Case No. 11-06373
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant had seven charged-off or collection accounts, which totaled approximately \$48,000. He has paid two, asserts a third has been paid, and is making payment on four remaining accounts. Applicant has rebutted or mitigated the financial considerations security. Clearance is granted.

History 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 February 23, 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 March 16, 2012, Applicant answered the SOR and requested a hearing. On March 30, 2012, I was assigned the case. On March 30, 2012, DOHA issued a Notice of Hearing for the hearing held on April 13, 2012.

The Government offered exhibits (Ex.) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through Z, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information, which was received on May 10, 2012. Department Counsel had "limited objections" to the admissibility of the material, and asserted the weight given the material be minimal. The material was admitted into the record, over the objections² of Department Counsel, as Ex. AA. On April 23, 2012, 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, with explanations. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 68-year-old program master scheduler who has worked for a defense contractor since June 2010, and seeks to maintain a security clearance. In May 1961, he joined the U.S. Naval Reserve. In May 1969, after having been an enlisted service member for eight years, he was commissioned in the U.S. Naval Reserves. (Tr. 48) In 1993, after 33 years, he retired as a captain (O-6). During the Vietnam conflict, he served as a ship's gunnery officer and went through six months of intensive combat during which over 15,000 rounds of ammunition was fired at hostile targets. (Tr. 51) He first began working for DoD contractors in 1979, after leaving active duty.³(Tr. 54)

Applicant's friends and co-workers describe him as: kind, thoughtful, dependable, trustworthy, forthright, and honest. He is a dependable employee with a strong work ethic and pride in doing assignments well, a dedicated family man, an ethical, moral, and very dedicated Christian believer. He is a critical thinker with a very analytical mind. (Ex. B)

In December 2004, Applicant's first wife passed away from the complications of tongue and throat cancer. Medical bills of two million dollars had been incurred, of which his insurance paid 90% and he was responsible for 10% which equaled to approximately \$200,000. (Ex. 1) He paid this debt through the use of retirement funds,

² Department Counsel argued that Applicant's "Rebuttal to Statements" was additional argument and testimony for which Government was denied the opportunity for cross-examination. Additionally, it was argued the submission did "not contain evidence which reliably corroborates their relation to a SOR account." The objections were overruled and the material was admitted for the appropriate weight warranted.

³ During that time the ship was struck by an enemy land battery which killed one and wounded seven others on the ship. (Tr. 51)

credit cards, home refinancing, and other income. (Tr. 115) All of the medical bills have been paid. (Tr. 102)

Applicant remarried in March 2006. In June 2006, he sold his home and in August 2006, he and his wife decided to purchase a home, which they did with a loan of over one million dollars. (Exs. H and I, Tr. 65) His and his wife's adjusted gross income, as shown on their 2006 federal tax return, was \$201,000. (Ex. D) His annual salary was \$87,000 and his retirement was \$42,000. (Exs. F and G) His monthly first and second mortgages totaled approximately \$6,200, with interest rates of 7.25% and 11%. (Exs. Q and X) After closing on the house, he learned his annual real estate property tax was an unanticipated \$12,000. (Ex. K)

In December 2009, Applicant retired from his DoD contractor job and he and his wife moved to a different state. Within 45 days of retirement, he decided he was too young to retire and started working for another contractor. (Tr. 59)

In 2009, shortly after moving to a different state, Applicant's wife's employer informed her that she was terminated when the company chose to employ in-house personnel. By March 2010, her contracting work was ending. His wife's monthly income declined from \$5,500 to \$6,000 monthly to \$1,500 monthly. (Exs. N and W) After the contract to purchase the home was signed, Applicant's wife lost her job when her company went bankrupt. She received nothing of the approximate \$32,000 she was owed for work performed. (Ex. R) State reciprocity accreditation in the new state has prevented his wife from working as a nurse practitioner. Being unable to work in the nursing field, at the new location, has resulted in the loss of approximately \$85,000 annually. (Ex. 2) Her salary was reduced to \$12,000 annually and has further lowered to \$5,000 annually. (Tr. 71, 76)

The real estate market went into decline leaving Applicant owing \$350,000 more than the home was worth. In 2008, he attempted, but was denied, a reduction in value review by his lender. (Exs. S and T) At the same time, he provided \$20,000 to his son, which has not been repaid. (Tr. 110) The money was to pay traffic tickets and prevent repossessions of vehicles. (Tr. 110) His daughter started college adding another \$10,000 annually to their expenses. When his mother-in-law⁴ moved in with them, several thousand dollars were spent renovating their home to accommodate her.

Applicant paid a real estate attorney \$2,500 to assist them in negotiating a lower interest rate and paid \$3,500 to a mortgage foreclosure consulting service. (Exs. L and M, Tr. 136) He was unable to negotiate a lower interest rate or monthly payment. Additionally, he did not qualify for any government mortgage relief assistance. (Ex. N, O, and P) In 2007, he also hired a credit assistance company to help resolve his credit problems. (Ex. V) After paying the company \$5,892, and receiving no results, he stopped further payments to the credit repair company. (Ex. AA, Tr. 133) The company

⁴ His mother-in-law died in August 2011. (Tr. 2)

had assured Applicant that the interest on his debts would stop accruing. This did not occur. (Tr. 134)

In June 2009, Applicant's monthly mortgage payment increased. The primary lender agreed to a short sale, but the sale did not occur due to objections by the holder of the second mortgage. In January 2010, he provided a deed-in-lieu-of-foreclosure. (Tr. 65) Following the deed-in-lieu-of-foreclosure, the lenders have made no demand for payment on the second mortgage⁵ (Tr. 65) None of the SOR obligations relate to the home's purchase or foreclosure.

As of September 2011, Applicant's net monthly income was approximately \$11,900, his monthly expenses and debt payment was \$11,700, and his net remainder approximately \$200. (Ex. 2, Tr. 139) Since that time, his rent has been reduced by \$700 monthly. He has reduced his monthly horse costs, his stepdaughter has moved to another state with her horse, and the additional cost incurred related to his mother-in-law ended with her death. (Tr. 141) They are selling their truck, tractor, and farm equipment. (Tr. 141)

Applicant owed an apartment complex (SOR 1.a) \$1,313. The lease allowed for early termination if Applicant or his wife were terminated from work. The apartment management refused to honor the termination clause when his wife lost her job. (Ex. 2) The creditor agreed to accept a \$663 settlement offer and the account has been settled in full. (Ex. A) Applicant made \$150 monthly payments on the department store account (SOR 1.b, \$1,461) in March and April 2012. (Ex. Z) He is also paying \$150 monthly on the credit card debt (SOR 1.c, \$4,829). (Tr. 87) The collection agency offered to settle the matter for \$2,897. (Ex. Z, Tr. 126) The creditor in a second obligation (SOR 1.d, \$9,055) offered to settle the debt for \$5,673. He is paying \$100 monthly on a charged-off credit card. (Ex. Z, Tr. 88)

The collection agency collecting for the department store account (SOR 1.e, \$4,418) agreed to settle the debt for \$1,069 with six payments of \$194 each. (Tr. 88) On April 11, 2012, a \$433 electronic payment was made on this account. (Ex. Z) The collection firm collecting the \$10,303 (SOR 1.f) obligation agreed to settle for \$2,000. (Tr. 88) He is making \$150 monthly payments on the debt. (Tr. 89) The collection agency on the SOR 1.g (\$16,395) obligation has agreed to settle the matter for \$3,254. (Ex. Z) Applicant pays \$200 monthly on this debt. (Ex. Z, Tr. 90, 132)

The credit union offered a \$10,000 loan, which Applicant intends to use to settle his three largest obligations: SOR 1.d (\$9,055), SOR 1.f (\$10,303), and SOR 1.g (\$16,395). (Tr. 90) The three creditors have offered to settle for \$10,927.

⁵ The house was located in an anti-deficiency state wherein the lenders can only look to the value of the property for repayment of any outstanding mortgage.

In January 2012, Applicant's wife had a hip replacement. Even though the hospital assured them, prior to the surgery, that their total cost would be \$40, they received a \$1,300 bill. (Tr. 104)

Four of the creditors have offered to settle their accounts for \$13,820. A summary of Applicant's eight charged-off and accounts placed for collection and the current status of each follows:

	Creditor	Amount	Current Status
a	Collection account.	\$1,313	Paid. Settlement in Full. Wife was terminated from work which should have released them from the last month of their lease. (Ex. 2, A, and SOR Answer)
b	Collection account.	\$1,461	Paid. Creditor agreed to 12 monthly payments of \$131.00 each. Since December 2011, Applicant has paid \$1,400 on this account. (Ex. AA) He asserted, but failed to document, he had paid the creditor an additional \$600 and the creditor agreed to close the account. (Ex. AA)
c	Collection account.	\$4,829	Paying. Account closed in August 2008 and the credit bureau report (CBR) shows a zero balance. Between May 2009 and May 2012, Applicant paid \$1,200 on this account. (Exs. Z and AA) The collection agency offered to settle this debt for \$2,897. (Ex. Z, Tr. 126)
d	Charged-off account.	\$9,055	Paying. The creditor offered to settle this debt for \$5,673. (Ex. Z, Tr. 88) Since October 2011, Applicant has made eight monthly payments of \$100 each. (Exs. Z and AA)
e	Collection account.	\$4,418	Since March 2012, Applicant has paid \$1,433 on this account. (Exs. Z and AA) He asserts it has now been paid in full.
f	Collection account.	\$10,303	Paying. Creditor offered to settle for \$2,000. (Tr. 88) Applicant agreed to monthly automatic debits. In April 2012, he paid \$150.
g	Collection account.	\$16,395	Paying. In September 2011, creditor agreed to accept \$3,254 to settle this debt. (Ex. Z) In April 2012 and May 2012, Applicant made \$200 monthly payments on this account. (Exs. Z and AA)
		\$47,774	Total debt listed in SOR

Applicant and his wife have chosen to downsize from their current location. (Tr. 66) When he moved into their home he anticipated financial support from his step-daughter and her boyfriend. At one time, five people were living in the house. Now there are just Applicant and his wife. They have decided the size of the house and property is too large and the cost to maintain the place too great. (Tr. 67) The lease has been terminated and they are moving to a less costly home. He has a debit card and a credit card with a \$300 limit. (Tr. 100) He now has a clear picture of how to handle his finances. (Tr. 101) He listens to financial planners on the radio and has attended a financial course through his church. (Tr. 137)

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 owed approximately \$48,000 on seven past-due obligations. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has paid two of the delinquent accounts (SOR 1.a and 1.b). He asserted, but did not document, that he had paid a third (SOR 1.e), but did show payments were made on this debt. He has received settlement offers on the remaining four debts. The creditors have offered to settle the delinquent accounts for approximately \$14,000. He is making monthly payments on these four remaining accounts.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by his first wife's cancer that required him to pay 10% of the medical charges, which was approximately \$200,000. He paid this debt. He is making payment on his remaining four collection accounts. His current actions do not cast doubt on his reliability, trustworthiness, or good judgment. However, because he has multiple delinquent debts and his accounts are still being paid, he does not receive full application of the mitigating condition listed in AG ¶ 20(a).

Under AG ¶ 20(b), Applicant's first wife's unexpected medical condition was beyond his control. When his second wife moved to her current location, her nursing credentials did not immediately transfer. Her annual income decreased from \$85,000 to less than \$10,000. Applicant has acted responsibly in contacting the creditors and establishing repayment plans with them following their settlement offers. AG ¶ 20(b) applies.

Applicant has received financial counseling and there are clear indications the problem is under control. The \$48,000 of outstanding SOR obligations has been reduced to a \$14,000 obligation. The creditors might revoke their offers in compromise, but once having made such offers; most creditors honor their offers believing it is in their best business interest to accept the settlement amount the offered. Applicant makes monthly payments on the four remaining accounts. There are clear indications that the problem is being resolved or is under control. AG ¶ 20(c) applies.

Applicant has settled and paid two of the delinquent accounts and documented he paid \$1,433 on the third account (SOR 1.c, \$4,418) Since March 2012, he has made monthly payments to the remaining creditors establishing a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) applies.

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 joined the U.S. Navy in 1961 and served honorably until his retirement as a captain. He has provided outstanding service to government contractors. His financial burden was increased when the number of individuals in his household increased. His household has now been reduced to just Applicant and his wife. Additionally, his wife's delay in receiving her state medical credentials at her new location has cost the household approximately \$75,000 annually in lost income. Even with these difficulties, the amount yet owed by Applicant is approximately \$14,000.

The amount of debt yet to be paid does not indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Applicant incurred sizable medical bills for the medical treatment during his first wife's medical treatment, which he has paid. Having paid \$200,000 in medical bills gives assurance he will pay the \$14,000 yet owed to his creditors.

The issue is not simply whether all Applicant's debts have been paid – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts that the delinquent debt yet to be paid will be paid. For all these

reasons, I conclude Applicant has 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, F, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge