



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



In the matter of: )  
)  
) ISCR Case No. 11-06621  
)  
Applicant for Security Clearance )

**Appearances**

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

06/13/2012

---

**Decision**

---

HEINY, Claude R., Administrative Judge:

Applicant had two charged-off accounts, eleven accounts placed for collection, three past-due accounts, and seven unpaid medical debts. These financial obligations total approximately \$23,000. He has entered into a debt settlement plan addressing 12 accounts that total more than \$18,000. The incorrect responses to financial questions on his security clearance questionnaire were not intentional falsifications. Applicant has rebutted or mitigated the financial considerations and personal conduct security concerns. 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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued

---

<sup>1</sup> 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.

Applicant an undated Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct.

On October 14, 2011, Applicant answered the SOR and requested a hearing. On March 15, 2012, I was assigned the case. On April 5, 2012, DOHA issued a Notice of Hearing for the hearing held on April 24, 2012.

The Government offered exhibits (Ex.) 1 through 7, which were admitted into evidence without objection. Applicant testified and submitted Ex. A and B, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On April 24, 2012, additional material was submitted and admitted into the record as Ex. C and D. Department Counsel had no objection to the material. On May 1, 2012, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted eight of the delinquent accounts and denied the remainder. I incorporate Applicant's admissions to the SOR allegations as findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 39-year-old aircraft electrician who has worked for a defense contractor since February 2005, and seeks to maintain a security clearance. From December 1990 through December 1994, he served in the U.S. Navy, during the Gulf war. (Ex. 5) Following active duty, he was a Navy reservist until medical problems cause him to stop. (Ex. 5, Tr. 31)

Applicant called no witnesses other than himself, and produced no work or character references. His current annual base pay is approximately \$50,000. (Tr. 32) Last year, Applicant's wife was unemployed. (Tr. 28) She has been recently employed and makes \$7.25 per hour. (Tr. 28) Applicant and his wife have an 11-year-old son.

From October 2008 through August 2010, Applicant and his wife underwent major surgeries. He had neck surgery and two back surgeries and was out of work for a period of time. (Tr. 24) She had ablation surgery and a hysterectomy, which resulted in the loss of her job due to time lost from work following her surgeries. (Tr. 26) Their health insurance paid some, but not all, of their medical expenses. (Ex. 5) In October 2010, he was interviewed concerning his finances. In September 2011, he completed interrogatories stating he would be re-filling a number of the medical debts with his insurance company. (Ex. 6) He believes that one medical bill (SOR 1.c, \$118) was paid. (Tr. 36)

Applicant and his wife both opened credit card accounts (SOR 1.h, \$3,685 and SOR 1.m, \$4,724) that were used to pay for medical treatment. Six of the medical debts are unpaid; however, the SOR does not specifically allege these accounts were delinquent. They are not alleged to be overdue, charged-off, or collection debts.

As of September 2011, Applicant's net monthly income was \$3,300 and his monthly expenses were \$2,227. (Ex. 6) In February 2012, he entered into a debt settlement program. The plan required him to make \$295 monthly payments for more than 36 months to address 11 accounts. (Ex. A, B) The monthly amount is automatically debited from this bank account. (Tr. 27) He has made four monthly payments that total approximately \$1,200. (Tr. 46) The plan allows for the addition of debts to the settlement program. (Tr. 60)

In October 2010, when Applicant completed his Electronic Questionnaires for Investigations Processing (e-QIP), he answered "no" to all the financial questions listed in Section 26. (Ex. 1) He failed to indicate he had defaulted on a loan; had debts turned over to a collection agency; had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed; had been more than 180 days delinquent on any debt; or was currently more than 90 days delinquent on any debt. He answered as he did because, at the time, he did not know any accounts had been turned over to a collection agency. (Ex. 5) He was receiving medical bills for the surgeries that occurred between 2008 and 2010, but did not believe he was delinquent on these debts or any other debts. He was unaware any accounts had gone to collection. (Tr. 48)

In October 2010 and November 2010, during subject interviews concerning his finances, Applicant did not recognize ten accounts, did not know their current status, or if they had been turned over for collection. (Ex. 5)

Applicant's October 13, 2010 credit bureau report (CBR) indicates all of his student loans were being paid as agreed. (Ex. 3, C) In December 2006, Applicant moved out of an apartment into his home. Prior to leaving, the rental company had agreed to keep his security deposit. After vacating the premises, the company requested additional money (SOR 1.f, \$1,195). (Tr. 36, 37)

Applicant is current on his \$468 monthly car payment for a 2008 Ford. (Tr. 44) He has no credit cards. He is current on his \$917 monthly mortgage payments. (Tr. 46) He has about \$5,000 of equity in the home. He has approximately \$3,000 in his company's 401(k) retirement plan. (Tr. 45) He is current on his utility bills and has not received any calls or letters from creditors since joining the debt relief program. (Tr. 46) He has received financial counseling from his father. (Tr. 56)

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

	Creditor	Amount	Current Status
a	Medical debt. Applicant denies owing the medical debts listed in SOR 1.a through 1.e and SOR 1.s through 1.u.	\$241	He resubmitted these accounts to his insurance carrier believing they are covered by his insurance.

	Creditor	Amount	Current Status
b	Medical debt	\$1,288	Denied debt, resubmitted to his insurance carrier.
c	Medical debt	\$118	Applicant believes this debt has been paid by his insurance carrier. (Tr. 36)
d	Medical debt (Ex. 3, 7)	\$55	Denied debt, resubmitted to his insurance carrier.
e	Medical debt (Ex. 3)	\$325	Denied debt, resubmitted to his insurance carrier.
f	Collection account for apartment complex. (Ex. 3, 7)	\$1,195	In December 2006, Applicant moved out of this apartment forfeiting his security deposit. (Tr. 36 – 37)
g	Charged-off department store account. (Ex. 3, 7)	\$713	Paying. This debt is included in the debt settlement program. (Ex. B, Tr. 38)
h	Charged-off account for hearing aids or dental work for Applicant's spouse. (Ex. 3, 5, 7)	\$3,685	Paying. This debt is included in Applicant's debt settlement program. (Ex. B, Tr. 39)
i	Collection account. (Ex. 7)	\$1,635	Paying. This debt is included in the debt settlement program. (Ex. B, Tr. 39)
j	Collection account. (Ex. 7)	\$661	Paying. This debt is included in the debt settlement program. (Ex. B, Tr. 40)
k	Collection account for a refrigerator purchase. (Ex. 3, 7)	\$2,278	Paying. This debt is included in debt settlement program. (Ex. B, Tr. 40)
l	Collection account. (Ex. 3, 7)	\$2,540	Paying. This debt is included in the debt settlement program. (Ex. B, Tr. 40)
m	Collection account on a medical credit card. (Ex. 3, 4, 5)	\$4,724	Paying. This debt is included in Applicant's debt settlement program. (Ex. B, Tr. 40) This is the same obligation that is listed in SOR 1.h. (Tr. 40)
n	Telephone service collection account. (Ex. 3, 7)	\$200	Applicant denied the debt. He has not had phone service with this provider since 2005. (Tr. 41)
o	Past due student loan with a balance of \$19,110. (Ex. 7)	\$102	Paying. Applicant is making payments on this debt. He paid \$120 on February 6, 2012 and March 26, 2012. (Ex. C, Tr. 41)

	Creditor	Amount	Current Status
p	Past due student loan with a balance of \$22,003. (Ex. 7)	\$117	Paying. Applicant is making payments on this debt. He paid \$120 on February 6, 2012 and March 26, 2012. (Ex. C, Tr. 41)
q	Medical collection account. (Ex. 3)	\$40	Paid. (Tr. 41)
r	Collection account. (Ex. 3)	\$1,625	Paying. This debt is included in the debt settlement program. (Ex. B, Tr. 42)
s	Medical collection account. (Ex. 3)	\$123	Denied debt, resubmitted to his insurance carrier.
t	Medical account. (Ex. 3)	\$163	Denied debt, resubmitted to his insurance carrier.
u	Medical account. (Ex. 3)	\$424	Denied debt, resubmitted to his insurance carrier.
v	Department store account 90 days past due with a balance of \$1,589. (Ex. 3, 7)	\$56	Paying. This debt is included in Applicant's debt settlement program. (Ex. 6, B, D, Tr. 42)
w	Department store collection account. (Ex. 3, 7)	\$659	Paying. This debt is included in Applicant's debt settlement program. (Ex. B, Tr. 43)
	Total debt listed in SOR	\$22,837	

### **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 had two charged-off accounts, three past-due accounts, and eleven accounts placed for collection. He also had seven unpaid, but not delinquent, medical accounts. These 23 obligations totaled approximately \$23,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

From October 2008 through August 2010, both Applicant and his wife underwent numerous surgeries. The medical debts account for half of his debt (\$11,256 out of a total of \$22,837). Seven of the medical debts, totaling approximately \$2,700, are listed as owing<sup>2</sup>, but are not listed as past due, charged off, or in collection. Of the eleven medical debts, Applicant has paid one medical debt (SOR 1.q, \$40) and two others (SOR 1.h, \$3,685 and SOR 1.m, \$4,724) are included in a settlement payment plan. He

---

<sup>2</sup> The fact that a debt is unpaid is not necessarily a security concern. Debts that are not being addressed as agreed are of concern. However, unpaid debts will be considered and given appropriate weight in the overall decision as to Applicant's financial status.

has resubmitted the remaining seven medical debts to his insurance carrier for payment.

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 was substantially affected by circumstances beyond his control. Under AG ¶ 20(b), Applicant underwent three surgeries and his wife two. Not only did their medical problems result in medical bills, but his wife's surgery resulted in the loss of her job, which increased their financial difficulties. His medical problems cause him to leave the U.S. Navy Reserve and to lose income associated with his Reserve service. Half of the debt relates to medical treatment for his surgeries, but the other half was not the result of factors beyond his control. AG ¶ 20(b) applies to the medical bills.

Under AG ¶ 20 (c), Applicant has received financial counseling and his financial problems are under control. AG ¶ 20(c) applies.

Applicant had three past-due accounts. He is now current on his two student loan accounts (SOR 1.o and SOR 1.p), and current on his department store account (SOR 1.v). He has a settlement repayment plan addressing nine charged-off or collection accounts. More than \$18,000 of the SOR debt, equivalent to 80 per cent of the SOR debts, is included in the plan. He has the ability to add additional debts to the plan. He has made his monthly payments for a sufficient time to provide assurance that he will continue with his monthly payments until the accounts are paid. AG ¶ 20(d) applies.

The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan, which he has. Applicant's entire financial situation and the actions he has taken must be evaluated to determine if the plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's plan addresses 80 percent of the debt, two additional student loans are being paid as agreed, and seven other medical debts are simply listed as unpaid. The medical bills are not alleged to be delinquent. This addresses the majority of the Applicant's debt. Two debts are neither included in the repayment agreement nor have been addressed: the apartment debt and the phone service debt. He believed his security deposit would be sufficient to cover all costs when he terminated the lease. If the debt (SOR 1.f, \$1,195) is a valid debt, I believe Applicant would add it to his repayment agreement. This is also true of the telephone service debt (SOR 1.n, \$200). Even though Applicant disputes these two debts, AG ¶ 20(e) does not apply, because Applicant has not provided written documentation supporting the dispute.



The two unaddressed obligations and the remaining seven unpaid medical debts total approximately \$4,000. These obligations are sufficiently small as to not raise concerns about his current reliability, trustworthiness, or good judgment.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following personal conduct disqualifying conditions potentially apply to the facts of this case:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

In October 2010, when Applicant completed his e-QIP, he answered "no" to all the financial questions listed in Section 26. (Ex. 1) He failed to indicate he had defaulted on a loan; had debts turned over to a collection agency; had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed; had been more than 180 days delinquent on any debt; or was currently more than 90 days delinquent on any debt.

Applicant's answers related to his debts were incorrect, but this does not prove he deliberately failed to disclose information about his finances. Applicant denied any intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he was receiving medical bills for his and his wife's surgeries, but was unaware any accounts were delinquent. He did not know any accounts had been turned over to a collection agency. Having observed Applicant's demeanor and listened to his testimony, I find his e-QIP answers were not deliberate omissions, concealments, or falsifications. I find for him as to personal conduct.

## **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. Half of the debt was incurred for medical treatment. The surgeries resulted in medical bills, but also resulted in his wife losing her job. His medical problems have prevented him from being able to perform reserve duty. The loss of his wife's income and his Reserve income added to their financial problems. Applicant is living within his means and the debts are now being addressed.

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).) His past obligations are being addressed. Although he knew he had medical bills, he was unaware of any collection accounts when he completed his e-QIP. 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 has mitigated the financial considerations and personal conduct security concerns

## **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.w: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraph 2.a: 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