



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



In the matter of:)
)
) ISCR Case No. 11-08849
)
Applicant for Security Clearance)

Appearances

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

08/27/2013

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. He has two judgments, collection accounts, and charged-off accounts totaling more than \$24,000, which have yet to be resolved. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 10, 2013, 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 February 11, 2013, Applicant answered the Statement of Reasons (SOR) and requested a hearing. On May 15, 2013, I was assigned the case. On May 31, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on June 10, 2013. I admitted Government’s

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.

Exhibits (Ex) 1 through 5 and Applicant's Exhibit A, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. No additional material was received. On June 19, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, Applicant denied two charged-off and one collection account. He admitted the remaining allegations. 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 46-year-old supervisor who has worked for a defense contractor since April 2010, and seeks to maintain a secret security clearance. (Tr. 22) Applicant called no witnesses other than himself, and produced no work or character references. He was on active duty in the U.S. Air Force from September 1984 through September 2004. He retired as a master sergeant (E-7). (Tr. 57) Following his retirement, he moved to another state. His wife, a registered nurse, was employed prior to his retirement, but was unemployed in the new location for one year before finding employment. (Ex. 2, Tr. 24, 50)

Applicant's income and Air Force retirement were insufficient to meet the household's financial needs. In December 2004, three months after retiring from the Air Force, he filed for Chapter 7 bankruptcy protection. (Tr. 48) In April 2005, his debts were discharged.

Applicant was employed for approximately 20 months when he learned his father had Alzheimer's disease. (Tr. 25) He wanted to move closer to his father when he was called and offered a new position in a new state. (Tr. 25) In June 2006, Applicant obtained new employment on the opposite coast, which was closer to his father's location. (Ex. 2) In July 2006, one week after arriving at their new location, his wife gave birth. (Tr. 26) In November 2007, she gave birth to another child.² (Tr. 32) Due to the births and raising the children, his wife was unemployed for two years. (Tr. 32) At times, he used a credit card to pay another credit card bill. (Tr. 35) In August 2008, his wife regained employment. (Tr. 32)

In June 2007, he purchased a home for \$212,000. (Tr. 54) He put nothing down and financed 100 percent of the purchase price. (Tr. 54) His monthly payment on his first mortgage was \$1,440 and \$335 on his second mortgage. (Tr. 48)

In October 2007, Applicant obtained the services of a debt financial service company to help him with his financial obligations. All communication with creditors went through the company. (Tr. 26) In 2009, creditors again started to contact Applicant. He learned the company went out of business after he had paid them several thousand dollars for their assistance in managing his financial affairs. (Ex. 2)

² Applicant and his wife have seven children. His wife has a child from her first marriage. He had two children from his first marriage. And they had four children together. (Tr. 32) The children are ages 5, 6, 12, 15, 25, 26, and 27. (Tr. 59)

In December 2009, a creditor obtained a judgment against Applicant in the amount of \$5,642, attorney's fees of \$640, and court cost, plus \$567 interest as of November 6, 2009 with interest continuing at seven percent annually thereafter. (Ex. 2)

In April 2010, Applicant was laid off at work. He was unemployed for two weeks before starting his current job, which required him to relocate to another state. His wife was unemployed following the move to the new state. (Tr. 32) After leaving the home, he never made another mortgage payment on his home. (Tr. 47, 55) When he left, he hoped to arrange a short sale of his home at his prior location, but foreclosure occurred before he could arrange a sale. He was five months behind on his first mortgage of \$1,440 and on his second mortgage of \$335. (Tr. 48) The property sold for \$124,901. (Tr. 45) Applicant has asked the bank for a letter of forgiveness.³

In March 2011, Applicant had a personal subject interview in which his finances were discussed. (Ex. 2) At that time, the delinquent SOR accounts were discussed.

In August 2012, Applicant paid \$13,953, by weekly allotment, on a collection account not listed in the SOR. (Tr. 27) He was released from any and all obligation on the account. (Ex. 2, Tr. 20) The weekly allotments started at \$100, which he later increased to \$200 weekly. (Tr. 28)

Applicant asserts he intends to fully pay his debts. (Tr. 24) His wife is now employed full-time, making \$34,000 per year. (Tr. 58) His salary is just under \$80,000 and he receives \$18,000 annually from his Air Force retirement. (Tr. 58) He stated he and his wife are now making more money than they have ever made before. The combined household annual income is \$132,000. He asserts he does not have very much remaining income after paying his expenses, but does intend to contact his creditors. (Tr. 32) He has not received any financial counseling since 2007.

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	Judgment by bank on a credit card account.	\$2,095	Unpaid. The collection agency has made a settlement offer, but Applicant has not accepted the offer or made any payments on the debt. (Tr. 35)
b	Judgment.	\$5,642	Unpaid. (Tr. 36)
c	Telephone service collection account.	\$555	Paid. (Ex. A, Tr. 27)

³ Applicant provided no documentation pertaining to the state law provisions of mortgage companies seeking reimbursement following foreclosure of a primary residence. (Tr. 55)

	Creditor	Amount	Current Status
d	Collection account.	\$7,152	Unpaid. Applicant has been unsuccessful in his attempts to contact the creditor. (Tr. 38) This is the same collection agency who obtained the judgment listed in b. above, but has not been established as the same debt.
e	Charged-off account.	\$4,316	Unpaid. Applicant has had no contact with the creditor. (Tr. 44) Last activity on this account was in 2007. (Tr. 45)
f	Charged-off account.	\$4,880	Unpaid. Applicant has had no contact with the creditor within the last five years. (Ex. 2)
g	Second mortgage was more than 120 days past due on \$166,000 balance.	\$1,340 (Est.)	House went to foreclosure. The house sold for \$124,900 following the foreclosure. Applicant has asked the bank for a letter of forgiveness.
h	Chapter 7 Bankruptcy filed in December 2004. Discharged in April 2005.		Applicant filed for bankruptcy protection three months after his retirement from the Air Force.
	Total debt listed in SOR	\$24,640	This amount does not include the mortgage foreclosure.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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. He resorted to bankruptcy in 2004, three months after retiring from the Air Force. He has two judgments, collection accounts, and charged-off accounts which total more than \$24,000. 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 meets none of the mitigating factors for financial considerations. In 2005, all of his debts were discharged in bankruptcy and he was given a fresh financial start. I do not find against him for having to seek bankruptcy protection. SOR 1.h is found in his favor. However, he has numerous delinquent accounts and judgments yet to be addressed. Because he 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 his wife was unemployed for varying periods when he accepted employment in new locations. However, the last period of unemployment occurred following his move in 2010. Except for two weeks in 2010, Applicant has been employed full-time since retiring from the Air Force in 2004. The household's annual income is

\$132,000. Given sufficient opportunity to address his financial delinquencies, he has failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.

The mitigating condition listed in AG ¶ 20(c) does not apply. He has not received financial counseling in the last five years and his delinquent obligations have yet to be fully addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because, to date, Applicant's efforts to address his delinquent accounts have been minimal. One delinquent telephone account was paid by allotment. There is no documentary evidence to support his assertions that he contacted any of his creditors and tried to arrange repayment plans. He asserted one creditor has made a settlement offer. An offer was made, but he has yet to accept the offer and make payments on the debt. He did pay the obligation in SOR 1.c (\$555). AG ¶ 20(d) applies to this single debt. Applicant has failed to act aggressively, timely, or responsibly to resolve his delinquent debts.

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.

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. There is some evidence in favor of mitigating Applicant's conduct. His wife went through several periods of unemployment following the birth of their children and after moving with her husband to a new state for his employment. Applicant honorably served in the Air Force and retired as a master sergeant.

The disqualifying evidence under the whole-person concept is more substantial. Even though the annual household income is \$132,000, Applicant asserts he has little money each month to address his past due obligations. He states he would like to pay

his past-due delinquent debts, but has made no payments on them and has yet to contact some of the creditors. His long-standing failure to repay his creditors, at least in reasonable amounts, or to arrange payment 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).) 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.

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 recommended. In the future, if Applicant has paid the judgments and delinquent accounts, established compliance with a repayment plan, or otherwise substantially addressed his delinquent obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge