



**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*

02/20/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has an unpaid judgment filed in July 2010, which has 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 a Statement of Reasons (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 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 Exhibits

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.

(Ex) 1 through 5 and Applicant's Exhibit A, without objection. Applicant testified at the hearing. On June 19, 2013, DOHA received the hearing transcript (Tr.).

In a decision dated August 27, 2013, Applicant's request for a clearance was denied. Applicant appealed that decision. At some point prior to the case file reaching the DOHA Appeal Board, 66 pages of material submitted by Applicant was added to the record. That material had not been viewed by me or Department Counsel (DC). The decision was remanded to allow consideration of Applicant's post-hearing material. I have reviewed the material, marked it, and admitted it as exhibits B through L. Four pages (Ex. B – E) of the documents related to Applicant's past-due debts. Ex. F (8 pages) relates to his current job performance. The bulk of the material (Ex. G – L, 61 pages) concerned Applicant's active duty career in the United States Air Force. He retired in September 2004.

On December 2, 2013, I received the Appeal Board Decision. On December 12, 2013, I sent DC a letter asking if he had seen Applicant's post-hearing submissions. DC had not seen the material. A copy of the material was provided to DC. How Applicant's post-hearing submissions came to be included in the case file is unknown.

The determination to deny Applicant's security clearance application was due to Applicant's minimal efforts to address his delinquent accounts. At the hearing, one delinquent telephone account SOR 1.c (\$555) had been paid by allotment. AG ¶ 20(d) applies to this single debt. There was no documentary evidence to support his assertions that he contacted any of his creditors and tried to arrange repayment plans. He asserted one creditor had offered a settlement, which he asserted he had accepted, but on which he had yet to start making payments. He asserted he was negotiating with the creditor holding a July 2010 judgment against him. (Ex. 2, 3) Because Applicant had failed to act aggressively, timely, or responsibly to resolve his delinquent debts, his security clearance was denied.

Applicant's post-hearing submission established that the March 2009 judgment listed in SOR 1.a. (\$2,095) had been paid by garnishment. (Ex. E) The creditor for the debt listed in SOR 1.e had agreed to accept \$146.57 weekly payments, but no payments in accord with the agreement had been made. (Ex. C) On June 12, 2013, two days after the hearing, Applicant made an offer to the law firm holding the July 2010 judgment (SOR 1.b). (Ex. D) Applicant provided no document indicating the offer had been accepted.

Following the remand, the record was opened until January 1, 2014, to allow Applicant to provide additional documentation about his finances and up-date his progress on the judgment debt and the payments he had offered to make on another debt. In a letter dated December 12, 2013, Applicant was asked to provide proof he was making his \$146 weekly payments as he had agreed; that his offer related to the unpaid judgment had been accepted, that he was making payments in accord with the offer; and to provide documentation that the holder of the second mortgage on his foreclosed home was not bringing legal action to obtain a judgment regarding the deficiency resulting from the second mortgage.

Having received no response from Applicant by January 1, 2014, I sent him an email requesting he submit all financial information that he wished to be considered by January 21, 2014. On January 14, 2014, Applicant submitted material that was admitted as Ex. M – P. As of January 14, 2014, Applicant's offer to pay \$100 weekly on the July 2010 judgment had been submitted to the law firm. (Ex. O) The law firm requested 24 to 48 hours to respond to the offer.

On February 5, 2014, Applicant was asked as to the status of his offer on the judgment and given to February 10, 2014, to provide any documentation that he desired to be considered. On February 7, 2014, he responded that he did not agree to the law firm's counter offer and negotiations were continuing on this judgment. (Ex. Q)

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 47-year-old supervisor who has worked for a defense contractor since April 2010, and seeks to maintain a secret security clearance. (Tr. 22) He was on active duty in the U.S. Air Force from September 1984 through September 2004, retiring 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)

While in the Air Force, Applicant had been awarded the Air Force Commendation Medal twice, the Air Force Achievement Medal, the Kosovo Campaign Medal, and various other ribbons and awards. (Ex. G) He provided numerous letters of appreciation and certificates of recognition. In 1993, he was the wing's professional of the quarter. (Ex. G –K) He was very highly rated on his enlisted performance reports between September 1984 and January 2004. (Ex. L)

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) In June 2006, Applicant obtained new employment on the opposite coast, which was closer to his father's location. (Ex. 2, Tr. 25) In July 2006, one week after arriving at the 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,

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)

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 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, both held by the same lender. (Tr. 48)

In October 2007, Applicant obtained the services of a debt financial service company to help him with his financial obligations. (Tr. 26) In 2009, he learned the company had gone out of business after he had paid them several thousand dollars. (Ex. 2)

Applicant incurred a credit card debt (SOR 1.e) in the amount of \$5,642. (Ex. 2, page 144) The account was sold to another lender, which placed the debt for collection (SOR 1.d, \$7,152). (Ex. 2, page 141) In July 2010, that lender obtained a judgment (SOR 1.b) against Applicant in the amount of \$5,642, attorney's fees of \$640, and court costs, plus \$567 interest as of November 6, 2009 with interest continuing at seven percent annually thereafter. (Ex. 2) The debts listed in SOR 1.b, 1.d, and 1.e are the same debt. Applicant was questioned about the judgment during his March 2011 personal subject interview (PSI). (Ex. 2) In his September 2012 response to written financial interrogatories (Ex. 2), he states that he was "[i]n negotiations now" about the debt. In June 2014, following the hearing, he made an offer to pay \$100 weekly on this debt.

Between Applicant's June 2014 offer and the December 2014 letter requesting the status of his offer, he provided no proof of any negotiations. He failed to respond by January 1, 2014, when he was again asked to provide an update on the status of payment on this judgment. On July 14, 2014, he had renewed his offer to pay \$100 weekly and the law firm was to respond within 24 to 48 hours. On February 5, 2014, Applicant was again requested to provide an update as to the status of his offer and payment on this judgment. On February 7, 2014, he stated he did not accept the law firm's offer because it was \$2,000 higher than the judgment. His response did not address that in addition to the principal amount owed, the judgment required him to pay attorney fees and interest. He asserted he is attempting to negotiate a repayment agreement on the judgment filed in July 2010.

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 state and his 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, but foreclosure occurred before he could arrange a sale. He was five months behind on his first mortgage of \$1,440 monthly and on his second mortgage of \$335 monthly. (Tr. 48) The property sold for \$124,901. (Tr. 45)

The lender of the first and second mortgage was the same mortgage company. Applicant asked the bank for a letter of forgiveness, which he never received.³ Under state law, to obtain a deficiency judgment after foreclosure, a lender must seek legal action with the state superior court within thirty days following the sale. (Ex. P) The lender failed to do this. The second mortgage debt is no longer enforceable.

In August 2012, Applicant finished paying, by weekly allotment, a \$13,953 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) The judgment listed in SOR 1.a (\$2,095) was paid in early 2011 by garnishment. (Ex. E)

Following the hearing, Applicant arranged a repayment plan with the creditor listed in SOR 1.f (\$4,880). (Ex. N) As of January 2014, Applicant had made 31 weekly payments of \$146 each. He has paid \$4,543 and \$2,491 remains to be paid. (Ex. N)

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. (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	March 2009 judgment by bank on a credit card account.	\$2,095	Paid by garnishment in 2011. (Ex. E)
b	July 2010 judgment. Attorney fees and interests is owed on this judgment in addition to the \$5,642 principal amount.	\$5,642	Unpaid. Although Applicant has been frequently questioned about this judgment since July 2010, it remains unpaid. This same debt is listed in d. as a charged-off account and in e. as a collection account.
c	Telephone service collection account.	\$555	Paid. (Ex. A, Tr. 27)
d	Collection account.	\$7,152	Duplicate debt. This is the same debt listed in b. and e.

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
e	Charged-off account.	\$4,316	Duplicate debt. This is the same debt listed in b. and d.
f	Charged-off account.	\$4,880	Paying. Applicant has made 31 weekly payments of \$146 each. He has paid \$4,543. The balance owed is \$2,491. (Ex. N)
g	Second mortgage was more than 120 days past due on \$166,000 balance.	\$1,340 (Est.)	Unenforceable. Any action to obtain a deficiency judgment is barred by statute unless the lender seeks court action with the state superior court within thirty days of the foreclosure. (Ex. P) The lender brought no action.
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. His wife was unemployed.
	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 had 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.

In 2005, all of his debts were discharged in bankruptcy and he was given a fresh financial start. I do not find against him simply for having to seek bankruptcy protection. However, someone who has had to resort to bankruptcy should be especially careful concerning their personal finances to insure problems do not continue or recur. Following a bankruptcy, a person should be more aware, concerned, and careful about their finances than someone who has not sought such protection. Following his bankruptcy, his financial problems continued. In 2009, a judgment, now paid, was entered against him. In July 2010, a judgment, still unpaid, was entered against him. He was questioned about this debt in March 2011. In September 2012, he asserted he was in negotiations to pay this debt. He provided no documents showing any type of contact with the law firm holding the judgment from September 2012 until June 2013, the date of the hearing.

Following the hearing, Applicant contacted the law firm and made an offer. Following that offer, he has provided no documentation of any additional follow-up or negotiations on the offer until January 2014. In January 2014, he renewed his offer. In February 2014, he rejected the law firm's counter offer and alleged he was once more involved in negotiations concerning this judgment.

It has been more than three and a half years since the judgment was entered. During that period, the only documents related to negotiating a repayment plan on this judgment appear to be the result of the SOR. Even after being initially denied a clearance, because he had not acted aggressively in addressing this long-standing judgment. His actions to reach a repayment agreement have been minimal. He has had sufficient time to address this judgment. The handling of this debt casts doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives very limited application of the mitigating conditions listed in AG ¶ 20(b). The household's annual income is now \$132,000. His wife was unemployed for varying periods when he accepted employment in new locations, with the last period of unemployment occurred following his 2010 move. Except for two weeks in 2010, Applicant has been employed full-time since retiring from the Air Force in 2004.

The mitigating condition listed in AG ¶ 20(c) does not apply. AG ¶ 20(d) applies to some of his debts. The judgment in SOR 1.a was paid by garnishment in early 2011. He paid the obligation in SOR 1.c (\$555). He is making weekly payments on the debt in SOR 1.f. He has reduced the balance owed from \$7,035 to \$2,491. Having made 31 weekly payments, it is likely he will continue making payments until the debt is paid.

In 2012, Applicant paid \$13,953, by weekly allotment, on a collection account not listed in the SOR. The weekly allotments started at \$100, which he later increased to \$200. The repayment of this debt shows Applicant follows through on repayment agreements once they are established.

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's 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. His evaluations indicate he was highly rated while in the Air Force. The delinquent second mortgage on his foreclosed home is unenforceable. He has paid some of his debts. Although one was paid by garnishment.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has a long history of financial problems. In 2004, his financial situation was such that he sought bankruptcy protection. Even with the discharge of his debts, he continued to have financial problems resulting in a March 2009 judgment, and July 2010 judgment and other charged-off and collection accounts. In April 2010, when he moved to a new state for a new job he stopped making his mortgage payments. After leaving, he never made another payment. His house went to foreclosure. Bankruptcy, judgments, and home foreclosures are strong evidence of an individual with serious financial problems that have occurred over a long period of time.

Even though the annual household income is \$132,000, Applicant asserts he has little money each month to address his past due obligations. He has a long-standing failure to repay the July 2010 judgment. His actions related to addressing that judgment are minimal and any action on that debt appears to be largely due to the SOR. There is no documentation showing he continued negotiation to reach a repayment plan following the hearing when six months later he was requested to provide updated information about this judgment. His inaction on this debt raises concerns about his fitness to hold a security clearance as does his ten-year period of serious financial problems.

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 with questions and doubts concerning Applicant's eligibility and suitability for a security clearance. Any doubt must be resolved in favor of national security. 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**

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d—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