



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-10761  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: Prophetess Andrea, Personal Representative

02/10/2014

**Decision**

MASON Paul J., Administrative Judge:

The Statement of Reasons (SOR) lists six delinquent accounts and one judgment. After subtracting the car account at **SOR ¶ 1.b**, which was discharged in a 2005 Chapter 13 bankruptcy, and the cellular telephone bill at **SOR ¶ 1.g**, which is a duplicate entry of the same account at **SOR ¶ 1.e**, Applicant’s total delinquent debt is approximately \$13,072. The SOR also reveals that in four of the last ten years Applicant did not file federal tax returns. Even though Applicant is paying off a car judgment through garnishment, that process does not constitute a good-faith effort to repay an overdue creditor. Furthermore, he has not presented the necessary documentation to confirm his claims that the other accounts have been satisfied. Applicant’s financial problems have not been mitigated. Eligibility for access to classified information is denied.

## Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on May 25, 2011. He was interviewed by an investigator from the Office of Personnel Management (OPM) on June 14, 2011. The June interview summary and Applicant's interrogatory responses appear in GE 2, where he also supplied tax information and documentation confirming a homeowner's lien was satisfied in June 2008. The only change he noted to the interview summary was that he did not serve in the United States Army (USA). He agreed that the summary could be admitted into evidence at a hearing to determine his security suitability. (GE 2)

On May 29, 2013, the Department of Defense (DOD) issued an SOR detailing security concerns under the financial considerations guideline (Guideline F). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on July 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 3, 2013, for a hearing on September 26, 2013. The hearing was held as scheduled. GE 1-GE 5 were admitted into evidence without objection.<sup>1</sup> Applicant and his personal representative testified. His two leave and earning statements (AE A) were admitted without objection. The record remained open until October 11, 2013, to allow Applicant an opportunity to submit documentation in support of his claims of having paid several of the debts listed in the SOR. No documentation was received. The transcript (Tr.) was received on October 4, 2013. The record closed on October 11, 2013.

## Findings of Fact

The SOR alleges six delinquent debts, a judgment, and a failure to file federal tax returns from 2008 through 2011. Applicant denied ¶¶ 1.a, 1.b, 1.c, and 1.e. He admitted 1.d and 1.f-1.h. His answers will be incorporated into the following Findings of Fact:

Applicant is 44 years old. He was married in January 1993 and divorced in September 2010. He has a 20-year-old son by that marriage. He has been in a common-law relationship for an unknown period. Since April 2013, he has been renting a house with his

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<sup>1</sup> The Government exhibit list reflects that Applicant signed his e-QIP on March 16, 2010. He signed the e-QIP on May 25, 2011.

son, his common-law wife, and her daughter from another relationship. Applicant was on active duty in the United States Navy from 1988 until his honorable discharge in 2001. He left the Navy because he was not able to acquire the duty station he wanted. Another reason for his departure from the service was to halt his wife's constant threats to complain to his commanding officer about marital issues caused by his supposed misconduct. Applicant realized he did not take advantage of the education available for separating service members.

Applicant then joined the United States Air Force (USAF) Active Reserve in June 2002, but was separated from the Reserve in August 2004, when he could not pass the rating exam. He has been employed with a defense contractor since November 2010 in information technology (IT) at the help desk. He occupied the same position with six previous employers (defense contractors). According to his e-QIP, he has been employed continuously since April 2000. Currently, he is employed at the help desk by two contractors at the same work location. He has held a DOD security clearance since 2003. In 2009, he received eligibility for a public trust position with the United States Department of Justice. He seeks a continuation of his security clearance.

When Applicant was honorably discharged from the USN in 2001, he was unprepared for life outside the military. He had no savings, and nowhere to live. His claim of having no job contradicts the information he provided in his e-QIP. He purchased a house he could not afford. His wife provided no help with household expenses. He bought a car from the creditor at **SOR ¶ 1.a** in early 2004. The installment car loan account was transferred for collection in June 2005, after Applicant became delinquent on the monthly payments. His wife did not help with the payments because she was not working. When she was working, she refused to help him pay the bills. Applicant filed a Chapter 13 bankruptcy petition in September 2004 to reorganize his debt burden. The bankruptcy petition was successfully discharged in June 2005. He sold his house in 2005, and used the proceeds to pay several bills. Apparently, he did not satisfy the car creditor at **SOR ¶ 1.a**, either with the proceeds from the house sale or through the Chapter 13 petition, and the car creditor filed a judgment for \$10,613 in October 2009. A garnishment action against Applicant's wages followed. His wages are still being garnisheed for \$155 to \$200 a week to satisfy the judgment which is currently about \$13,000.

On June 2011, Applicant informed the OPM investigator that his financial problems occurred because he mismanaged his money. His couples therapy counselor, who also advised him on financial issues, testified that based on her nine-year professional relationship with Applicant and his former wife, his financial problems stemmed from depression, difficulties prioritizing, and a lack of timeliness in paying his bills. She believes he paid the utility debt identified at **SOR ¶ 1.c**, and expressed her willingness to assist Applicant retrieve documentation for the debts listed in the SOR.

In his interrogatory responses in November 2012, Applicant furnished a personal financial statement (PFS) indicating monthly net income of \$5,226. According to the PFS, his monthly expenses were \$3,034, and monthly debt payments were \$675. Subtracting his monthly expenses and debts from his net monthly income leaves a net monthly remainder of \$1,517. At the hearing, Applicant testified that his monthly income has increased with the \$300 contribution from his current common-law wife. His net monthly remainder has increased to approximately \$1,822, not \$2,600.<sup>2</sup>

**SOR ¶ 1.b** represents a car loan. Though Applicant provided conflicting positions about the account, the 2011 credit report lists an account with the same first five digits as the listed car loan account in the more recent 2013 credit report. Also, the 2011 credit report notes in the trade line that account was included in Applicant's 2004 Chapter 13 bankruptcy petition. I find this debt was paid and is no longer Applicant's responsibility.

**SOR ¶ 1.c** is a delinquent utility bill that was transferred to a collection agency. Applicant believed he paid the debt by credit card. As noted, his counselor testified he told her he paid the debt. Their claims lack documentary proof. The debt remains unresolved.

**SOR ¶ 1.d** is a delinquent medical bill. Applicant testified that to obtain a security clearance with another agency, he had to pay off the debt. Applicant believed he had paid the debt by credit card and could access the statement at home on his computer. No documents were produced. The debt remains unresolved.

**SOR ¶ 1.e**, a cellular telephone bill, is the same account that is listed again in **SOR ¶ 1.g**. Applicant noted in his November 2012 interrogatory responses that he had taken no action on this account. At the hearing, he reiterated that the debt had not been paid. Applicant was advised that he could contact the specific creditor by first contacting the credit agency at their telephone number posted in the credit report. The debt has not been paid.

**SOR ¶ 1.f** is a penalty assessed against Applicant for writing overdrafts or checks without sufficient funds. Applicant contends he satisfied the overdraft to bring the account back in good standing. He believed he could obtain some documents to support his claim. No documents were produced. The delinquent account remains his responsibility.

**SOR ¶ 1.h** alleges that Applicant failed to file his federal tax returns for 2008, 2009, 2010, and 2011. He testified that he would have to pay \$500 to retain an attorney recommended by his counselor. He had not paid the retainer because he had other bills to pay. He has not filed the federal tax returns.

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<sup>2</sup> The net monthly remainder of \$2,359 entered in the PFS is incorrect.

In Applicant's opinion, working at two full-time help-desk positions has improved his financial situation. Though he has always lived paycheck-to-paycheck, since 2006, he has been able to make his monthly rent and car payments with a little money left over. He has been able to satisfy some unlisted accounts or reduce the amount of debt he owes to other unlisted creditors. He could not identify any listed or unlisted accounts he had resolved. Applicant was advised by an unknown person not to seek credit counseling because the counseling does not help one's credit. He always thought he could work out his budgeting problems by himself.

### **Character Evidence**

Applicant's couples counselor pointed out that because of lack of preparedness for civilian life, his wife's periodic unemployment, and her refusal to contribute to family bills when she was working, Applicant struggled at times to provide a proper home environment to raise his son. His counselor considers him a reliable person who is devoted to his son and his work.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

## Analysis

### Financial Considerations

The security concern for financial considerations is set forth in AG ¶ 18:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual federal, state, or local income tax returns as required or the fraudulent filed of same.

The SOR lists four delinquent accounts and one judgment. After subtracting the car loan at **SOR ¶ 1.b** (2005 Chapter 13 bankruptcy), and the cellular telephone account at **SOR ¶ 1.g** (duplicate entry of **SOR ¶ 1.e**), the total amount of debt totals \$13,072. The creditor at **SOR ¶ 1.a** garnisheed Applicant's wages in 2009 to recover the judgment. His leave and earning statement reflects the garnishment is still in effect. Though he claimed other listed debts have been paid, including the account at **SOR ¶ 1.c**, which he told the counselor he had paid, he provided no documentary evidence in support. Lastly, Applicant has not filed tax returns for 2008, 2009, 2010, and 2011. AG ¶¶ 19(a), 19(c), and 19(g) are applicable.

The potentially pertinent mitigating conditions under AG ¶ 20 are:

- (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 reliability, trustworthiness, and good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control 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.

The record shows that the origin of Applicant's financial troubles began after his discharge from the USN in 2001. Without a place to live, and plagued by marital issues, it is not surprising that three years later, Applicant was filing a Chapter 13 bankruptcy petition in 2004 to regain control over his financial responsibilities. Though he completed the Chapter 13 petition in 2005, he continued to have financial problems. His wages are still being garnished for the car account at **SOR ¶ 1.a** and he owes four additional creditors. While he has an overall reputation for being reliable, he continues to demonstrate poor judgment in managing his financial obligations. AG ¶ 20(a) does not apply.

On reflection, Applicant realizes he should have remained in the USN in 2001, rather than leave the service totally unprepared for civilian life. At least he acknowledges he should have taken advantage of the classes available to aid separating service members prepare for civilian life. Similarly, leaving the service to prevent his then-wife from complaining to his command does not seem to be a significant reason unless there was some other adverse issue in the marriage that is not in the record.

Applicant exercised good judgment by filing a Chapter 13 wage earner's plan in 2004, to try to regain control over his delinquent debts. However, continuing to have financial problems after the wage earner's plan was successfully discharged in 2005 indicates that Applicant has not acted responsibly to improve his financial practices. AG ¶ 20(b) applies only in part.

Applicant testified he was advised not to pursue credit counseling because it would not improve his credit. Based on his belief that he could figure out his budgeting problems, it is reasonable to conclude he has never had financial counseling. Although he claims he has been doing better with his finances since 2006, he conceded he was still living paycheck-to-paycheck. He contended he paid some unlisted creditors, but was unable to identify them. He claimed he paid several of the listed creditors, but provided no supporting evidence. On balance, there are no clear indications that his financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply.

## Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 44 years old. He was honorably discharged from the USN in 2001, after 13 years of service. He candidly acknowledged he was not prepared for civilian life. He divorced his first wife in 2010. He is currently in a common-law relationship. In April 2013, he began renting a house with his son, his common-law wife and her daughter.

Applicant is congratulated for successfully completing a Chapter 13 wage earner's plan in 2005. However, despite being continuously employed since 2000, he has not sought any type of financial or credit counseling to improve his financial practices. He was living paycheck-to-paycheck before 2006, and he still living paycheck-to-paycheck at the present time. His current financial difficulties are likely to continue in the future. He has not paid the retainer so that the tax attorney can file the missing tax returns and he can pay taxes that may be due. Having weighed the totality of the evidence in the context of the whole-person factors, Applicant has not mitigated the security concerns under the financial considerations guideline. See AG ¶¶ 2(a) (1) through 2(a) (9).

### 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 (Guideline F):

AGAINST APPLICANT



Subparagraphs 1.a, c, d, e, f, h:                      Against Applicant

Subparagraphs 1.b, g:                                      For Applicant

**Conclusion**

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

Paul J. Mason  
Administrative Judge