



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-11081  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

10/31/2012

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant has two unresolved judgments and six collection accounts, which total in excess of \$52,000. He has made no payments on these delinquent accounts nor established any repayment plans with the creditors. He has failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

**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.

a Statement of Reasons (SOR) on March 21, 2012<sup>2</sup>, detailing security concerns under Guideline F, financial considerations.

On April 5 and 6, 2012, Applicant answered the SOR and requested a hearing. On July 30, 2012, I was assigned the case. On September 4, 2012, DOHA issued a Notice of Hearing for the hearing held on September 18, 2012. At the hearing, the Government offered exhibits (Ex.) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A and B, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. No additional material was received. On September 26, 2012, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied three debts (SOR 1.d, 1.e, and 1.i), which totaled \$256. He did not recognize the creditors listed in SOR 1.g and 1.i. and asserted the judgment listed in SOR 1.a and the debt referenced in 1.k. are the same obligation. He admitted owing the remaining debts. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 65-year-old technical staff assistant who has worked for a defense contractor since July 1990, and seeks to maintain a secret security clearance. (Tr. 25, 32) He served in the U.S. Navy from November 1964 through January 1967. In December 2000, he divorced his first wife and, in 2005, separated from his second wife. (Ex. 3, Tr. 26, 34) In January 2011, he retired and now works only 20 hours part time at his previous job. He receives \$1,500 monthly in retirement, \$1,400 monthly from social security, and \$1,600 monthly from his part-time work. (Tr. 28, 29, 30, 56)

Applicant called no witnesses other than himself, and produced no work or character references. In February 2012, Applicant answered financial interrogatories. He stated the debts, which were later listed in the SOR, were unpaid. (Ex. 2) During the interview, he did not indicate he was uncertain as to the identity of the creditors listed in SOR 1.g and 1.i.

From June 2009 through August 2009, Applicant hired a debt consolidation company that was to accumulate funds paid monthly by Applicant in anticipation of making lump-sum settlement offers to his creditors. (Tr. 23, 33) He asserts he paid the company \$3,500 and when his creditors began calling him, he requested the return of his money. He received \$700 from the company. (Tr. 24) In February 2011, he then hired an attorney to help him address his delinquent accounts. (Tr. 24)

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<sup>2</sup> Department Counsel stated the date of the SOR is March 21, 2012 and not as shown on the SOR, which is March 21, 2011. (Tr. 15)

Applicant has two judgments (SOR 1.a and 1.b) entered against him which totaled \$18,782. He never attended either court proceeding. (Tr.38, 39) The judgment in SOR 1.b (\$9,840) arose from travel expenses, a \$1,000 down payment made in 2003 or 2004 on his step-daughter's car, and other expenses put on his credit card. In June 2009, the amount owed on this debt was \$10,307. The creditor offered to settle for \$3,400. (Ex. B) Applicant did not accept the offer. Applicant asserts on one judgment (SOR 1.b), he paid the creditor's attorney \$1,000 and made several \$290 monthly payments. (Tr. 38-39)

In April 2007, Applicant refinanced his home for \$100,000 and also obtained a personal loan in the amount of \$10,000, which he used to buy out his wife's equity in their home. (Ex. 3, Tr. 35, 41) The house was then put solely in his name. (Tr. 26) With interest the amount owed is now \$12,941. The home was purchased in 1997 for \$102,000 and is currently worth \$130,000. (Tr. 27) He owes approximately \$100,000 on the home. (Tr. 28) In 2006, before she left, his wife's monthly income was \$4,000. (Tr. 32)

In 2007, Applicant cosigned on a \$21,000 truck for his son. (Ex. 5) His son failed to make the required payments resulting in a \$7,717 delinquent debt. At the interview, Applicant stated he did not know the location of his son or the truck. (Ex. 3, Tr. 46) He was last contacted by the collection agency six months ago. (Tr. 47)

In 2007, Applicant changed home energy providers. For a period he was receiving two utility bills. He had no electricity for five days. The \$97 was the charge by the electrical company to turn his electricity back on. He made a complaint to the utility commissioner over the company's actions. (Tr. 43) He also had problems with his cable provider and after six months stopped his service. He was charged \$66 (SOR 1.e) for an extra month of service when he returned the cable box one day late. (Tr. 45)

Applicant owes ten acres of undeveloped land which he purchased for \$17,000 and is now worth \$22,000. (Tr. 28) He owes no money on his 2002 Ford or 1996 Jeep. (Tr. 28, 57) He has \$15,000 in his checking and savings accounts. (Tr. 61) He states he is loyal to the United States and does not believe his credit problems should be an issue. (Tr. 72)

In Applicant's personal subject interview of April 2011, he stated he had hired an attorney to help him settle the judgments. (Ex. 3) In February 2011, Applicant talked with an attorney who recommended Applicant file for bankruptcy protection, which Applicant did not want to do. (Tr. 36) He paid the attorney \$1,800 and the attorney told him to refer Applicant's creditors to him and the attorney would attempt to negotiate settlements on the debts. (Tr. 36)

Since February 2011, Applicant has not sent the attorney any additional sums. Following the initial meeting where bankruptcy was recommended, Applicant has had one telephone conversation with his attorney. (Tr. 36) Since February 2011, Applicant has not received any information from his attorney indicating his attorney has made

progress negotiating with the creditors. (Tr. 37) Since February 2011, Applicant has not contacted any of his creditors. (Tr. 37)

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 from a credit card account. (Ex. 5)	\$8,942	Unpaid.
b	Judgment from a travel credit card account. (Ex. 5, Tr. 40)	\$9,840	Unpaid.
c	Collection account. (Ex. 5)	\$12,941	Unpaid. This loan was to buy out wife's equity in the home. (Ex. 3)
d	Energy company collection account.	\$97	Applicant disputes this electrical bill. (Ex. 3)
e	Cable company collection account.	\$66	Applicant disputes this cable bill saying he turned in the cable company's equipment. (Ex. 3, 4, Tr. 45)
f	Car company collection account. (Ex. 5)	\$7,717	Unpaid. Cosigned on truck for his son. (Ex. 3)
g	Collection account to collect on a credit card account. (Ex. 3, 5)	\$6,174	Unpaid. At the hearing he recognized this as an unpaid credit card debt. (Tr. 50)
h	Collection account.	\$93	Applicant does not recognize this account. (Ex. 3)
i	Collection account for a home improvement store credit card. (Ex. 3, 5)	\$5,148	Unpaid. (Ex. 3)
j	Collection account attempting to collect on a credit card account. (Ex. 4, 5)	\$1,356	Unpaid.
k	Collection account. (Ex. 5)	\$7,150	This is the credit card account that resulted in the judgment listed in SOR 1.a. (Ex. 3)
	Total debt listed in SOR	\$52,374	This amount does not include the amount listed in SOR 1.k.

## 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. Applicant has two unresolved judgments and numerous unresolved collection accounts, which total in excess of \$52,000. The disqualifying conditions referenced in AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The following six 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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant meets none of the mitigating factors for financial considerations. He has more than \$52,000 in unresolved debts. The two judgments against him and his unresolved collection accounts are numerous and recent. He has not acted responsibly in addressing his debts. He has received no credit or financial counseling, has not demonstrated that his financial problems are under control, has no plan to bring his debts under control, and has not made a good-faith effort to satisfy his debts.

Under AG ¶ 20(a), Applicant's financial obligations are normal living expenses. Applicant would borrow from or use his credit cards to pay for groceries, his utilities, and other purchases. In 2005, following the separation from his wife, he was no longer able to pay his debts as agreed. His unresolved debt casts doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. However, his divorce occurred in December 2000 and his separation in 2005. It has been seven years since the separation started. He last contacted his creditors in February 2011. He has not acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant has not received financial counseling and there are no clear indications his financial problems are being resolved or are under control. AG ¶ 20 (c) does not apply. He has made no good-faith effort to repay overdue creditors or otherwise resolve debts. Following the entry of a judgment against him, he made \$290 monthly payments for a while before stopping. He failed to document the number of payments made. This is insufficient to apply AG ¶ 20 (d).

Applicant disputes two small debts (SOR 1.d, \$97 and SOR 1.e, \$66). Even though he provided no documentation supporting his dispute, I find for him as to these two debts. AG ¶ 20 (f) does not apply because affluence has not been alleged.

## **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 has more than \$52,000 in unresolved judgments and collection accounts. Applicant was unable to pay his bills when he was employed full time. Now that he is employed part time he has even less funds with which to pay his bills. The debts incurred were for normal living expenses. He has not had any contact with his creditors since February 2011. Since the same time, he has not had any contact with his attorney whom he alleges is handling negotiations with Applicant's creditors. He has not paid his attorney any additional funds and has received no communication from the attorney as to the progress with the negotiations.

The issue is not simply whether all his debts are paid—they remain unpaid—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 did not mitigate 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**

Subparagraphs 1.a – 1.c:                      **Against Applicant**



Subparagraphs 1.d and 1.e:	For Applicant
Subparagraphs 1.f – 1.j:	Against Applicant
Subparagraph 1.k:	This debt is a duplication of SOR 1.a. 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.

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CLAUDE R. HEINY II  
Administrative Judge