



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-11736
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq. Department Counsel  
For Applicant: *Pro se*

09/13/2012

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant has three unresolved collection accounts, which total approximately \$35,500. Applicant has failed to rebut or mitigate the security concerns under Guideline F, financial considerations. Clearance is denied.

**Statement 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 a Statement of Reasons (SOR) on April 4, 2012, detailing security concerns under Guideline F, financial considerations.

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<sup>1</sup> 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) effective within the DoD on September 1, 2006.

On May 5, 2012, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated July 9, 2012. The FORM contained 11 attachments. On July 18, 2012, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He was instructed to file any objections or provide any supplementary information by August 18, 2012. As of August 20, 2012, no response had been received. On August 24, 2012, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted three accounts were placed for collection (SOR 1.a, 1.b, and 1.c). He denied two other collection accounts. I incorporate Applicant's admissions to the SOR allegations as findings of fact. After a thorough review of the pleadings, and exhibits, I make the following additional findings of fact:

Applicant is a 50-year-old manager who worked for a defense contractor from February 1996 through November 2008, at which time he took a voluntary, unpaid leave of absence<sup>2</sup> until November 2009. In November 2009, he was terminated when he refused to return to work following his leave of absence. He had requested an extension of his leave of absence, but his request was not approved. He was rehired in February 2011. He had started seeking employment in mid-2010.

Prior to November 2008, Applicant asserts he had always been current on his accounts. While unemployed, he lived on his savings, credit card accounts, and money borrowed from his mother. In July 2008, his wife filed for divorce. In January 2009, their former marital residence was sold for \$783,000. The net proceeds were used to pay attorney fees and the balance was equally distributed. As of July 2011, he and his spouse were separated and the divorce was proceeding.

On Applicant's April 2009 Electronic Questionnaires for Investigations Processing (e-QIP) (Ex. 4) He indicated his wages had been garnished. On his April 2011 e-QIP, (Ex. 6) he indicated he had had debts turned over to a collection agency, that he had accounts suspended, charged off, or cancelled for failing to pay as agreed, that his wages had been garnished, that he had been more than 180 days delinquent on a debt, and that he was currently more than 90 days delinquent on debts. He indicated he had debts totaling \$170,000, that he had settled \$117,000 of that debt, and was in the process of setting the remaining debt.

During interviews in July 2011 and September 2011, Applicant acknowledged owing 12 accounts. He acknowledged owing \$17,497 on a bank debt (SOR 1.a). (Ex. 8)

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<sup>2</sup> Applicant lived on one coast and was making repeated trips to care for his elderly parents on the other coast. When he was missing more work than his project could afford for him to be gone, he chose to take the unpaid leave of absence.

The creditor took the matter to court. Applicant's attorney appeared at the hearing, but the creditor failed to appear. An April 2012 letter from his attorney states the creditor has dismissed the case and was no longer pursuing collection of this debt. (Ex. 3, SOR Answer Attachment A) Applicant had previously challenged the debt as a fraudulent transfer put on his account by his spouse. (Ex. 8)

Applicant acknowledged the \$21,747 account (SOR 1.b) placed for collection. (Ex. 8) In his SOR Answer (Ex. 3) he acknowledged owing the debt and indicated he intended to settle the debt when his financial position improved. Applicant incurred a \$7,103 debt (SOR 1.c) for attorney fees. He was disputing the debt asserting his attorney made errors in handling his divorce. Applicant asserted he was attempting to resolve this dispute.

Applicant asserts the \$5,656 credit card debt (SOR 1.d) was incurred by his spouse and would be part of the allocation of debts in his divorce decree. He provided documentation asserting his former spouse used the credit card to incur debt, but provided no documentation establishing the matter was settled in the divorce decree. He paid the \$199 telephone bill (SOR 1.e).(SOR Answer Attachment C)

In January 2012, Applicant provided a personal financial statement indicating his net monthly income was \$9,332, his expenses were \$7,426, and his monthly payments on his debts was \$1,521, which left a net remainder of \$375.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 of obtaining 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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior 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 so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant had five accounts placed for collection, which totaled in excess of \$52,000. When he completed his April 2011 e-QIP, he indicated he had had debts turned over to a collection agency; that he had accounts suspended; charged off, or cancelled for failing to pay as agreed; that his wages had been garnished; that he had been more than 180 days delinquent on a debt; and that he was currently more than 90 days delinquent on debts. The evidence supports application of 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(a) – (e) 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; or

(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.

Between July 2011 and September 2011, Applicant was questioned about his finances. At that time, he acknowledged he had 14 delinquent accounts which totaled in excess of \$155,000. Applicant disputed two of the accounts that together totaled approximately \$16,500. One of the two challenged accounts was legally paid in full for less than the full amount. Of the 14 delinquent accounts, only five accounts placed for collection are alleged in the SOR. The creditor in SOR 1.a (\$17,334) is no longer

pursuing payment. Applicant paid the telephone bill (\$199) listed in SOR 1.e. The other three accounts placed for collections, which total approximately \$35,500, remain unpaid.

Under AG ¶ 20(a), it is assumed Applicant's financial problems were apparently caused by his separation from his wife and his on-going divorce proceeding. However, Applicant has failed to show the extent to which the divorce impacted his finances other than the challenged attorney fees (SOR 1.c, \$7,103). AG ¶ 20(a) does not apply because three debts remain unpaid and were not incurred under circumstances that are unlikely to recur.

Under AG ¶ 20(b), Applicant experienced both a separation and divorce process along with the financial burden associated with each, but he has failed to document the financial impact of those events. AG ¶ 20(b) does not apply.

Under AG ¶ 20(c), there is no indication Applicant has attended financial counseling or that his financial problems are under control. AG ¶ 20(d) applies to the SOR 1.e (\$199) debt, but to none of the remaining SOR debts.

Although Applicant disputes the \$7,000 debt for attorney fees (SOR 1.c) and asserts his spouse incurred the debt on a joint account listed in SOR 1.d (\$5,656), AG ¶ 20(e) does not apply to either of these debts. For AG ¶ 20(e) to apply, he must have a reasonable basis to dispute the legitimacy of the past-due debt. Stating his attorney made errors during his divorce falls short of establishing a reasonable basis of dispute. The other account was a joint account and as such, barring any legal action, each party is liable to the creditor for the entire amount. Applicant has provided no documentation to substantiate the basis of either dispute.

### **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 three charged-off accounts totaling in excess of \$35,000, which remain unpaid. He asserts he would like to settle or resolve his financial delinquencies. Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or credibility as to his truthfulness. From the record, I am unable to find Applicant intends to pay these debts or will be able to address them in the immediate future.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his remaining delinquent debt. By failing to provide such information, and in relying on only a scant explanation provided in his SOR answer, the accounts placed for collection remain a security concern.

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.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E 3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.d:	Against Applicant
Subparagraph 1.e:	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