



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 11-11793
)	
Applicant for Security Clearance)	

Appearances

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

02/24/2014

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. The debts following a vehicle repossession and home foreclosure plus nine charged-off or collection accounts alleged in the Statement of Reasons (SOR), total more than \$30,000, have yet to be resolved. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on April 9, 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. In an undated response, Applicant answered the SOR and requested a hearing. On September 14, 2013, I was assigned the case. On December 5, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of

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.

Hearing for a teleconference hearing convened on December 18, 2013.² Government's Exhibits (Ex) 1 through 4 and 5 were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. A- through H) was submitted and admitted into the record without objection. On December 27, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied he owed a deficiency balance (SOR 1.i, \$139,000) following the foreclosure of his home. He admitted the remaining charged-off or collection accounts, which totaled approximately \$30,000. (Tr. 14) 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 61-year-old radar technician who has worked for a defense contractor since January 2008, and seeks to maintain a secret security clearance. (Tr. 16, 17) He also worked for the same contractor from 2000 to 2005. (Tr. 16) Applicant called no witnesses other than himself, and produced no work or character references. Since January 2008, Applicant has worked in Afghanistan. He resides in company provided housing. (Ex. 2, Tr. 22) His annual salary the first three years he was overseas was approximately \$140,000. (Tr. 23) His current monthly gross pay is \$15,000 (\$180,000 per year). His deductions are \$8,000 and his monthly expenses are \$2,421, which leaves a monthly remainder of \$3,778. A portion of his \$180,000 annual salary is exempt from federal income tax due to the foreign earned income exclusion.

From December 2005 through March 2006, Applicant commuted from Nebraska to his job in New Mexico. His annual pay was approximately \$62,000. In August 2007, Applicant left the job by mutual agreement. He no longer wanted to work for the company. (Ex. 2) He does not recall if he was fired. He received severance pay as well as vacation pay from the company, totaling approximately \$3,000. (Ex. 2, Tr. 19, 30) He was unemployed from August 2007 through January 2008.

Applicant began experiencing financial difficulties in the fall of 2006. From August 2006 to February 2007, he was paying \$1,500 to \$2,000 monthly for his son's medical expenses. (Ex. 2) No medical expenses were incurred for his son after February 2007. (Tr. 29) His son is currently 22 years old and his daughter is 24. (Tr. 59, 60)

In February 2006, Applicant purchased a home for \$139,000. In the fall of 2006, six months after purchasing the home, he began experiencing financial problems and failed to make his \$1,170 monthly mortgage payments for six or seven months, which resulted in \$7,000 past-due. (Ex. 2, 3, Tr. 17) In February 2007, he was evicted from his home when the bank foreclosed upon the home. (Ex. 2, Tr. 18) He had no documents about the foreclosure and was unable to recall any details regarding the foreclosure.

² The hearing date was selected to coincide with Applicant's one-week visit to the United States from his overseas duty location. Coordination of the time and date of the hearing with Applicant was conducted during November 2013. Notice was sent when a hearing location was established.

(Ex. 2) He does not know if the home was resold. (Tr. 19) The bank has not pursued any legal action regarding any deficiency resulting from the foreclosure. (Tr. 18)

In early 2006, Applicant had also purchased a \$23,000 vehicle. In 2007, he began having trouble making his monthly payments. In early 2008, his vehicle was repossessed after he stopped making his \$574 payments in September 2007. (Ex. 5) He made 17 monthly payments on the 60 month contract. (Ex. 4, 5, Tr. 21) He owed approximately \$10,000 on the vehicle when it was repossessed. (Ex. 2) He asserts he has no additional obligation on this loan. He provided no documentation supporting his assertion. His December 2012 credit report lists a balance due of \$9,068.

In December 2012, Applicant had approximately \$9,000 in the bank and \$97,000 in stocks and bonds. (Ex. 2) From March 2009 through 2012, Applicant sent his son monthly amounts that averaged between \$750 and \$1,750. (Ex. A - F) He asserted, but failed to document, he sent his daughter a similar monthly sum over the same time period. He documented sending his daughter \$1,500 in July 2012. (Ex. G)

Between July 2012 and January 2014, Applicant sent his sister, who is on disability, \$10,500 and his niece, who is a single mother raising two children, \$20,400. (Ex. G, H) He paid his ex-wife \$32,070 and currently pays her \$1,000 monthly until \$95,000 in alimony is paid. (Ex. 2) He was divorced in November 2000. (Ex. 2)

In December 2012, Applicant was questioned about his delinquent debts. During a Personal Subject Interview (PSI), he indicated he was unaware of certain delinquent accounts appearing on his credit reports. He indicated he would pay a number of the delinquent accounts in January 2013. (Ex. 2) He has paid none of the debts.

In 2013, Applicant purchased a \$155,000 home with a \$30,000 down payment. (Ex. G, Tr. 38) He is current on his \$804 monthly mortgage payments. (Tr. 39) He is also current on his utility bills, which are approximately \$300 monthly. (Tr. 64) At the time of the hearing, his monthly net remainder (monthly income less monthly expenses and payment of debts) was \$3,000 to \$4,000 a month. (Tr. 40) He has approximately \$300 in each of two savings accounts. (Tr. 41) He has not had a credit card since 2007. (Tr. 44)

A summary of Applicant's delinquent accounts and their current status follows:

	Creditor	Amount	Current Status
a	Collection account for a telephone service. (Ex. 3, 4, 5)	\$869	Unpaid. In his PSI, he stated he would pay this debt in early 2013. (Ex. 2)
b	Collection account for a TV satellite service. (Ex. 3, 4, 5)	\$567	Unpaid. In his PSI, he stated he would pay this debt in January 2013. (Ex. 2)
c	Collection action on a medical account. (Ex. 3, 4, 5)	\$31	Unpaid. In his PSI, he stated he would pay this debt in early 2013. (Ex. 2)

	Creditor	Amount	Current Status
d	Charged-off account. High credit term was \$8,963. (Ex. 3, 4) The balance was \$6,991. Account opened November 2005.	\$8,963	Unpaid. In his PSI, he stated he would pay this debt in early 2013. (Ex. 2)
e	Charged-off account. (Ex. 3, 4, 5) Account opened February 2001.	\$1,102	Unpaid. In his PSI, he stated he would pay this debt in early 2013. (Ex. 2)
f	Charged-off credit card account. Account closed by credit grantor. Account transferred or sold. (Ex. 3, 4, 5)	\$500	Applicant asserts he was never late on this account, which he closed in 2007. As of December 2012, he did not know why it was reported as charged off. In December 2012, he stated he planned to pay this debt in early 2013. (Ex. 2) At the hearing, he stated he did not remember anything about this account. (Tr. 47)
g	Charged-off bank account. Account closed by credit grantor. Account transferred or sold. (Ex. 3, 5)	\$5,766	Unpaid. In his PSI, he stated he would pay this debt in early 2013. (Ex. 2) At the hearing, he stated he would have to research this debt further. (Tr. 47)
h	Vehicle repossession. Vehicle purchased in February 2006 for \$23,000 with \$574 monthly payments. (Ex. 3, 4) It was repossessed in early 2008. (Ex. 2)	\$9,068	Unpaid. Applicant stated he owed \$10,000 on the vehicle at the time of repossession. (Ex. 2) December 2012 CR (Ex. 5) lists a \$9,068 balance.
i	Home foreclosure. (Ex. 3, 4, 5)	\$139,000	Unpaid. Home purchased in February 2006 for \$139,000.
j	Collection account for a wireless company.	\$121	Unpaid. This debt may have been a balance due when he moved overseas. This may have been for internet service. (Tr. 48) In December 2012, he stated he would pay this in full by January 2013. (Ex. 2)

	Creditor	Amount	Current Status
k	Collection account for an account listed as NAS.	\$3,185	Unpaid. He closed his credit union account at this installation in 1996. (Tr. 50)
	Total debt listed in SOR	\$169,172	\$30,172 excluding any deficiency following the foreclosure of his home.

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 *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.

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 owed approximately \$30,000 on ten past-due obligations plus his home went to foreclosure. Four of Applicant's debts were under \$600 each. 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 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.

For the past five years, Applicant has been gainfully employed. His current annual salary is \$180,000 a year and the first three years of his employment with his current employer it was \$140,000. Currently he has a \$3,000 to \$4,000 net remainder each month. Yet even his small delinquent accounts remain unpaid. In December 2012, when asked about his debts, he stated he would pay some of them in early 2013. A year later, none of the debts have been paid.

When an individual has had their vehicle repossessed or had their home foreclosed upon they should be especially careful concerning their personal finances to insure problems do not continue or recur. Following a foreclosure or repossession, a person should be more aware, concerned, and careful about their finances than someone who has not experienced such severe financial problems. Following the foreclosure and repossession in 2007, Applicant's financial problems continued.

None of the mitigating factors for financial considerations apply sufficiently to mitigate the financial considerations security concerns. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control, and he has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control. He has no plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

Because Applicant has multiple delinquent debts and his financial problems are continuing in nature, he receives minimal application of the mitigating condition listed in AG ¶ 20(a). Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives partial application of the mitigating condition listed in AG ¶ 20(b). Before February 2007, Applicant paid his son's medical expenses. However, the mitigating condition that the financial problem was largely beyond Applicant's control is offset by the fact that the delinquent obligations, resulting when he had to pay his son's medical expenses, were incurred more than six years ago. Additionally, his annual salary for the past five years ranged between \$140,000 and \$180,000. He has had

sufficient time and income to address his financial delinquencies. Applicant 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(d) does not apply because, to date, Applicant's efforts to address his delinquent accounts have been minimal. There is no documentary evidence that he contacted any of his creditors and tried to arrange repayment plans. 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 financial situation. He currently does not have a credit card. He made a \$30,000 down payment on a home in 2013 and is current on this mortgage and utility payments. He is paying his alimony requirements. He is providing financial assistance to his son, daughter, sister, and niece.

The disqualifying evidence under the whole-person concept is more substantial. He has been employed since January 2008. Some of the delinquent accounts were incurred before he obtained his current job. Even with more than five years of steady employment, he has yet to even pay the smaller delinquent debts listed in the SOR. In December 2012, he stated he would pay some of the debts in early 2013. He has paid none of his delinquent accounts. 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 concept of “meaningful track record” includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. Applicant has yet to establish a repayment agreement or pay his delinquent obligations.

The issue is not simply whether all of 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. 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
Subparagraphs 1.a - 1.k:	Against 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