



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



In the matter of:)	
)	
)	ISCR Case No. 11-11967
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2013

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 nine charged-off or collection accounts alleged in the Statement of Reasons (SOR), totaling more than \$20,000, have not been resolved. The financial considerations security concerns remain. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 30, 2012, 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. On December 20, 2012, Applicant answered the SOR and

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.

requested a hearing. On January 29, 2013, I was assigned the case. On February 5, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 26, 2013. I admitted Government's Exhibits (Ex) 1 through 4, without objection. Applicant testified at the hearing. On March 7, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 28-year-old manufacturing coordinator who has worked for a defense contractor since April 2008 and is seeking a clearance. (Tr. 14) He was unemployed from August 2007 through April 2008. (Ex. 2, Tr. 12) Applicant called no witnesses other than himself, and produced no work or character references.

In June 2011, Applicant had a personal subject interview, which included discussion about his finances. (Ex. 2) In 2007, he and his wife divorced following a two-year marriage. (Ex. 2) He states his financial problems began following his divorce when he was too emotionally traumatized by the divorce to care about paying his debts. During the interview, he stated he had not contacted his creditors, but would do so when he became financially stable. When stable, he would discuss repayment arrangements with the creditors. (Ex. 2) Six (SOR 1.a, b, c, d, g and h) of the nine SOR debts were then owed and discussed during that interview. (Ex. 2)

In 2012, Applicant married again. (Tr. 12) His wife is a convenience store manager making \$24,000 per year. (Tr. 17) His annual salary is \$33,000. (Tr. 17) Applicant is current on his \$650 monthly mortgage payments. (Ex. 2, Tr. 17) He purchased the home for \$70,000 and its fair market value in 2009, was \$120,000. (Tr. 17) He is current on his \$330 monthly vehicle payments.

In November 2012, Applicant completed a personal financial statement, which indicated his net monthly income was just under \$3,200, his monthly expenses were approximately \$1,800, and his monthly payments were approximately \$780. His monthly net remainder (monthly income less monthly expenses and payments) was approximately \$550. (Ex. 2)

For the past year, Applicant has been making \$25 monthly payments to a collection agency (SOR 1.c) on a cell phone collection account. (Tr. 18) The amount is automatically debited from his pay. He owes the same collection agency \$500 on a different cell phone account (SOR 1d, Tr. 25).

In December 2005, Applicant purchased a new car for \$27,000. (Ex. 3) When he became two months behind on the monthly payments, he put the amount on his bank credit card (SOR 1.b, \$1,000). The credit card debt has not been paid. Applicant sold

the car to a co-worker, with the understanding the co-worker would go to the bank and secure a new loan on the car. (Tr. 22) A new loan was never secured and additional payments were not made on the vehicle. Applicant told the bank where the vehicle was located and it was repossessed. He has not talked with the creditor concerning the \$12,127 debt (SOR 1.e) since the repossession. (Tr. 23) There is also a \$341 insurance debt (SOR 1.g) related to this vehicle. (Tr. 24)

Applicant obtained a signature loan to help his mother with her debts. His mother agreed to repay the debt. She failed to do so and approximately \$1,800 remains outstanding on this debt (SOR 1.f). Applicant purchased a lawn mower for his grandmother. There is a \$1,585 collection account (SOR 1.h) on this debt. (Tr. 25) He has a \$1,000 medical debt (SOR 1.i) in collection.

Applicant would like to pay his debts. (Tr. 27) Before his marriage, his credit was sufficient to enable him to purchase a new car and obtain signature loans. (Tr. 27) He does not currently receive calls or correspondence from creditors seeking payment. (Tr. 18) He has not received any financial counseling. (Tr. 28) He puts three percent of his salary in his company's 401(k) retirement fund and has approximately \$2,000 in the fund. (Tr. 34)

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 nine charged-off or collection accounts, which total approximately \$20,000. 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 year, Applicant has been making \$25 monthly payments on the debt listed in SOR 1.d (\$1,179). I find for Applicant as to this obligation. In June 2011, he was questioned about his delinquent accounts. In the year and a half since, he has only made the \$25 monthly payments on the one account. Since his interview, he has paid \$300 on his \$20,000 in past-due, collection, and charged-off accounts.

As to the remaining eight unpaid obligations, Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. In 2007, his two-year marriage ended. He did not explain the financial impact his divorce had on his ability to repay his debts other than to say he was too emotionally traumatized by the divorce to care about paying his debts. For nine months in 2007 and 2008, he was unemployed. However, he has been employed with his current employer almost five years and only paid \$300 on his past-due obligations. 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, or that he has a plan to bring them under control. Except for the \$25 monthly payment, he has not made a good-faith effort to satisfy his debts.

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 is current on his mortgage payments and is not receiving calls or correspondence from creditors demanding money. However, he has been aware of the Government's concern over his unpaid delinquent accounts since his June 2011 interview. Since then, he has paid \$300 on his debts. His progress in addressing his financial obligations is too little for a favorable finding on his behalf.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) 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. 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 E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Subparagraph 1.c:
Subparagraphs 1.d – 1.i:

For Applicant
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