



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



In the matter of:)	
)	
)	ISCR Case No. 11-12554
)	
Applicant for Security Clearance)	

Appearances

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

08/28/2013

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 judgment and 21 charged-off, collection, or delinquent accounts alleged in the Statement of Reasons (SOR), totaling more than \$26,000, have not been resolved. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 18, 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. On February 13, 2013, Applicant answered the SOR and requested a hearing. On May 16, 2013, I was assigned the case. On May 31, 2013, the Defense

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.

Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on June 13, 2013. I admitted Government's Exhibits (Ex) 1 through 6 and Applicant's Exhibits A through J, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. No additional material was received. In June 2013,² DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, Applicant denied twelve debts totaling \$12,534 and admitted the ten remaining charged-off, collection, or delinquent accounts. 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 39-year-old aircraft electrician who has worked for a defense contractor since October 2009. (Tr. 36) He stated he has held a security clearance since 1994. (Tr. 33) Applicant testified, but called no other witnesses nor produced any work evaluations. In letters co-workers state Applicant is hardworking, very personable, highly respected among his peers, displays a strong work ethic, and is enthusiastic about his career and life in general. (Ex. H, Ex. I, Tr. 28) Applicant can be counted on to complete the more challenging tasks that other employees would avoid. (Ex. H, Tr. 28)

In February 1994, Applicant was in the U.S. Army Reserves until he went on active duty. (Ex. G) He repaired radios. (Tr. 34) He served four years in the United States before a two-year tour in Korea. He served a one-year tour as an Army recruiter. He deployed to Iraq before he served his last assignment in the United States. (Tr. 35) In April 2008, he was discharged from the Army for medical reasons with an 80 percent disability. (Ex. G) He suffered from arthritis, bursitis, sleep apnea, diminished kidney function, and had shoulder surgery. (Tr. 35)

After leaving the Army, Applicant was unemployed for six months before obtaining a part-time job driving a school bus for three hours per day. (Ex. 3, Tr. 35) After that, he worked 25 hours per week at a home improvement store. (Tr. 36) During that period, he separated from his wife. (Tr. 32) From March 2008 to October 2009, he attended an aeronautics school and graduated *summa cum laude*. (Ex. 3, Ex F) Following graduation, he obtained his current job. (Tr. 36) He has been employed since October 2009. He stated, "I haven't gotten to the point where I'm making enough to really go back and chase down the old stuff. [I] [h]aven't made any new debt, but I haven't gone back to chase down the old stuff." (Tr. 33) He is able to meet his current obligations, but has not been able to address his old debts. (Tr. 39, 45, 63)

Applicant's annual salary is \$45,000, which does not include overtime or bonuses. (Ex. C, Tr. 36) He currently averages ten hours per week of overtime. (Tr. 56) With overtime, his annual salary is close to \$60,000. (Tr. 36) His wife makes \$10 per hour and brings home \$700 to \$800 every two weeks. Last year her income was \$14,000 to \$15,000. (Tr. 37) In September 2012, his monthly net income was \$2,040,

² The transcript was received during June 2013, but was not date stamped.

his wife's net income was \$1,200, and his U.S. Army retirement income was \$1,634. The total household income was \$4,874. His monthly expenses were \$2,474, with an additional \$375 in debt payments, which left a monthly net remainder of \$2,025. (Ex. 3)

In August 2011, Applicant was asked about his finances during a personal subject interview. (Ex. 3) In November 2012, Applicant answered written financial interrogatories in which he was asked about each of the SOR debts. (Ex. 2)

In 2006, a bank obtained a judgment against Applicant in the amount of \$683 (SOR 1.a), which remains unpaid. In 2007, Applicant's vehicle was repossessed and an \$8,820 debt (SOR 1.i) incurred. The auto dealer is now out of business and Applicant does not know to whom the debt was sold or whom to pay. Also in 2007, Applicant learned from a potential employer who had done a pre-employment background check that there was an arrest warrant for Applicant due to bad checks. (Ex. 3) He owed more than \$700 in charges. The warrant was dropped after he paid the charges. (Ex. 3)

On September 30, 2011, Applicant obtained assistance through a debt settlement company to repair his credit. (Ex. A, Tr. 39, 47) The last service was provided on February 21, 2012. (Ex. A) He maintained contact with the company through May 2012. (Ex. A) The service was to dispute or settle Applicant's delinquent accounts and was paid \$400 in October 2011 for the service. (Ex. 3, Ex. A) Once settlement was reached, Applicant was to pay the creditor the amount agreed. For this service, the company was paid \$1,880. (Ex. 3) Applicant asserted, but did not document, that through the service a number of duplicate debts were removed from his credit report. His credit score was 476 as of October 2011 and increased to 583 as of February 2012. His wife's score increased from 486 to 549 during the same period. (Ex. A)

Applicant attended a credit class at his church. (Tr. 49) He has read books and blogs on financial management. He listens to radio programs on financial management. He has learned to avoid extravagances and to cut spending. (Tr. 50) They do not have cable television.

Applicant asserted he could provide documentation that some of his medical bills were paid. (Tr. 40) He has had medical insurance through his company since 2009. (Tr. 52) He would like to pay his debts. (Tr. 68) He was specifically informed that he needed to provide documentation supporting his assertions that certain debts had been paid. (Tr. 41, 66) No documentation was received.

Applicant's wages were garnished to repay \$9,157 for a do-it-yourself (DITY) move when he was in the Army and to repay a bonus he was not entitled to when he joined the National Guard.³ (Ex. D, Tr. 41) Applicant provided documentation that he had repaid the Defense Finance and Accounting Service (DFAS) \$1,875 in 2011. (Ex. D) Applicant resolved the \$330 debt listed in SOR 1.I. (Tr. 43) He asserted, but failed to

³ Applicant was ineligible to join the National Guard because he was receiving more than 20% disability pay. (Tr. 42)

document, that he paid a telephone bill (SOR 1.q, \$872) because he had to obtain service with the company. (Tr. 43) He asserted this telephone debt was also listed in SOR 1.r (\$749) and SOR 1.s (\$484), but the other accounts were for his wife's telephone service at a different location while they were separated. (Tr. 44, 45) Applicant asserted he had returned the telephone company's equipment to them, but failed to obtain a receipt for the debt listed in SOR 1.r (\$749) and challenged the debt through the consumer credit agency. The debt remains on his credit report. He has made no payments on any of the other SOR debts. (Tr. 43)

Applicant has six \$495 payments left on his loan for his 2006 vehicle. He is also paying \$364 monthly on a 2008 vehicle. (Tr. 38) He is not receiving calls or letters from creditors demanding payment. He has more than \$19,000 in his company's 401(k) retirement fund. (Ex. B) As of March 2012, he was current on his student loans. (Ex. J)

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	2006 bank judgment.	\$683	Unpaid.
b	Collection account for unapid rent.	\$637	Unpaid.
c	Collection account for cable bill.	\$342	Applicant asserted he returned the cable boxes and paid \$70 for the last month of service. (Tr. 59) Account does not appear on his current credit report.
d	Unpaid medical account.	\$80	Unpaid. Applicant asserted the medical debts were paid, but provided no supporting documentation.
e	Unpaid medical account.	\$85	See d. above.
f	Credit union charged-off account.	\$1,835	Unpaid. (Tr. 59)
g	Collection account.	\$639	Applicant asserted this was the same debt listed in b. above, but provided no documentation establishing this.
h	Charged-off account.	\$586	Unpaid. (Tr. 59)
i	Repossessed vehicle collection account.	\$8,820	Unpaid. (Tr. 60)

	Creditor	Amount	Current Status
j	Government collection account for the DITY move.	\$9,157	Applicant asserts this debt has been paid, but documented only that he had paid DFAS \$1,875 in 2011.
k	Unpaid medical account.	\$94	See d. above.
l	Collection account for on-post cable provider.	\$330	Applicant asserts this debt was paid before he was allowed to clear post housing. No supporting documentation provided.
m	Collection account for on-post cable provider.	\$69	See l. above
n	Collection account for on-post cable provider	\$178	See l. above.
o	Collection account on a payday advance loan. (Tr. 62)	\$359	Unpaid.
p	Collection account for telephone service. (Tr. 62)	\$167	Unpaid.
q	Collection account for telephone service.	\$872	Applicant asserted he had to pay this debt to obtain telephone service with his current provider.
r	Collection account for telephone service.	\$749	Applicant asserted he returned the telephone company's equipment and the account does not appear on his current credit report.
s	Collection account for telephone service.	\$484	Unpaid. This was for telephone service for Applicant's spouse.
t	Medical collection account.	\$94	See d. above.
u	Collection account for utility service.	\$76	Unpaid.
v	Unpaid medical account.	\$106	See d. above.
	Total debt listed in SOR	\$26,442	

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 an unpaid judgment and numerous charged-off, collection, and delinquent accounts. Six of Applicant's debts were less than \$100 each and three more were less than \$200 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.

Applicant does not meet any of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple and remain unaddressed. In 2008, Applicant was discharged from the U.S. Army with an 80% disability rating. He was unemployed for six months. He has been employed at his current job since October 2009. He is able to pay his current obligations, but states he does not have sufficient funds to make payment on his older delinquent obligations. In 2011, Applicant's household's net monthly remainder exceeded \$2,000. He has not documented payment of any of the SOR delinquent obligations.

Applicant should have been very aware of the need to maintain control over his finances due to the 2007 arrest warrant for issuing checks with insufficient funds. Furthermore, the Government placed him on notice of the potential security implications of his debts in August 2011, during his personal subject interview when he was asked about the SOR debts. In November 2012, he answered written interrogatories about his delinquent accounts. These debts still remain unpaid.

Applicant asserted that he paid some of the SOR debts, that his medical insurance provider paid some of the obligations, and that some debts were duplicates. He was asked to provide documentation supporting these assertions. No documentation was received. The SOR debts remain unpaid and cast doubt on his current reliability, trustworthiness, and good judgment. Although his financial difficulties were not recently incurred, there are multiple debts and there is no documentation that any of the obligations, even those of small amounts, have been paid. He has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts. AG ¶ 20(a) does not apply.

More than four years ago, Applicant was unemployed for six months and was separated from his wife for an undisclosed period of time. He has been steadily employed since October 2009. He has failed to establish his inability to repay his delinquent accounts resulted from conditions largely beyond his control. AG ¶ 20(b) does not apply.

Applicant received financial counseling through his church, with the consumer credit repair agency he employed, by reading books, and listening to financial radio shows. The information he has gained from these sources may have helped him from incurring new debt, but has not helped in resolving his delinquent debt. AG ¶ 20(c) does not apply. He has made no documented payment on the debts, and has not established a good-faith effort to repay the overdue creditors, or otherwise resolve debts. AG ¶ 20(d) does not apply.

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 served more than 14 years in the Army with overseas service in both Korea and Iraq. He retired with an 80 percent disability rating. He would like to pay his past-due obligations, but states he does not have sufficient funds to do so. The issue is not simply whether all 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. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid the judgment and delinquent accounts, established compliance with a repayment plan, or otherwise substantially addressed his delinquent obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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.v: 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