



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



In the matter of: )  
)  
) ISCR Case No. 12-02358  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

03/11/2014

**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 judgment and four charged-off accounts alleged in the Statement of Reasons (SOR), totaling approximately \$24,000, have not been paid. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on September 11, 2013, the DoD issued an SOR detailing financial considerations 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 September 25, 2013, Applicant answered the SOR and requested a hearing. On December 6, 2013, I was assigned the case. On December 31, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a

<sup>1</sup> 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.

Notice of Hearing for the hearing convened on January 16, 2014. I admitted Government's Exhibits (Ex) 1 through 4 and Applicant's Exhibits A through E, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. On January 28, 2014, DOHA received the hearing transcript (Tr.). On February 3, 2014, an email was received from Applicant, which was admitted into the record without objection as Ex. F.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted owing the judgment and four charged-off accounts, but disagreed as to the amount owed on these delinquent accounts. His admissions are incorporated herein. After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 57-year-old fleet manager<sup>2</sup> who has worked for a defense contractor since November 1977, and seeks to maintain a secret security clearance. (Tr. 37) He has had no periods of unemployment. (Tr. 40) Applicant called no witnesses other than himself. He produced numerous letters of appreciation as to his professionalism, leadership, dedication, hard work, and superior work performance. (Ex. C)

In 1998, fifteen years ago, Applicant had a heart attack and was away from work for a "considerable length of time." (Tr. 23) He was not unemployed during this period. At a time not reflected in the record, Applicant cosigned on a car loan for his son. Applicant learned the car had been repossessed four months after the repossession occurred. (Tr. 24) Applicant got behind on his payments for his credit cards. He had more money going out than coming in. (Tr. 24) Ten years ago his credit rating dropped, which prevented him from being able to borrow money to repay his delinquent accounts. (Tr. 24, 25) When his financial problems started, both he and his wife received credit counseling. (Tr. 49)

In 2007, Applicant obtained his current position, which resulted in less income, because he no longer received overtime pay. His lower income coincided with his mother moving into their home. In 2008, his mother died. (Ex. A) About this time, he was diagnosed with colon cancer, which required a resection. (Tr. 23) Following two surgeries, his current monthly out-of-pocket medical expenses are \$400. (Ex. A)

In March 2009, approximately five years ago, a judgment (SOR 1. e, \$4,124) was entered against Applicant for an unpaid credit card debt. (Ex. 4) He has used the credit card to buy groceries, gasoline, and for bail for his son. (Ex. 4) In 2008 or 2009, Applicant had entered into an agreement with the debt consolidation company. (Tr. 32) He paid \$75 weekly to the company. (Tr. 49) In his January 2012 Personal Subject Interview (PSI), he stated this debt was being repaid through a debt consolidation company. (Ex. 4) He used this company to pay off one credit card account and was working to address a second credit card account when the financial company went out of business in 2009. (Tr. 50) (Ex. 4, SOR Response, Tr. 32)

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<sup>2</sup> Applicant started as a custodian and worked his way up in the company to his current position.

Applicant's December 2011 credit bureau report (CBR) lists a \$4,369 collection account (SOR 1.a) that was 150 days past due; a \$9,395 collection account (SOR 1.b); a \$5,747 collection account (SOR 1.c); and a \$4,124 judgment (SOR 1.e). (Ex. 2) His May 2013 CBR lists three charged-off accounts: \$4,369, \$9,395, and \$5,747. (Ex. 3) The 2013 CBR does not list the judgment, but does list a \$240 charged-off energy account. (Ex. 3)

In the January 2012 PSI, Applicant stated he was using the debt consolidation company to pay the \$4,369 collection account listed in SOR 1.a. (Ex. 4) At that time, he owed \$1,430 on the charged-off account listed in SOR 1.c (\$5,747). This credit card had been used to buy groceries and miscellaneous items. (Ex. 4) These delinquent accounts remain unpaid.

In July 2013, Applicant responded to written financial interrogatories. (Ex. 4) At that time, his gross annual salary was approximately \$98,000. His weekly take-home pay was approximately \$1,000. (Tr. 45) His net monthly remainder (net monthly income less net monthly expenses and monthly debt payment) was approximately \$450. (Ex. 4) His wife works as a paid caregiver. (Tr. 39, 48) The amount of her annual income is not part of the record.

Applicant has more than \$142,000 in his 401(k) retirement plan. (Ex. D) In June 2010, he borrowed \$34,000 from his retirement fund. (Ex. E) The loan was used in part to pay off "the wife's truck."<sup>3</sup> (Tr. 36) He pays approximately \$160 weekly to repay the loan, which has an approximately \$7,000 balance. (Ex. E, SOR Response) Once the loan is repaid, he intends to obtain a new loan to pay his delinquent accounts. (Ex. A, SOR Response)

Applicant and his wife have lived in the same house for 30 years, and he has approximately \$90,000 equity in the home. (Ex. 4) In October 2011, he was 30 days late on the \$1,215 monthly mortgage payment, but has since brought his mortgage current. (Ex. 4) In December 2011, the balance on his mortgage was \$64,483. (Ex. 2) He believes his house will be paid for in another seven years. (Tr. 47) There was a period of time when two non-relatives also lived in his home and relied upon him for financial support. For the past five years, his grandson has lived with him.

Applicant's wife drives a 1998 automobile, and he drives a 1991 pick-up truck. (Ex. A, Tr. 41) Creditors currently contact him seeking payment on his delinquent accounts. (Tr. 33) He has a debit card, but no credit cards. (Tr. 42) He has \$1,000 in his savings account and \$300 in his checking account. (Tr. 43, 44)

As of February 3, 2014, Applicant had experienced problems with his truck's motor and was waiting for documents so he could file his taxes. (Ex. F) He was planning on paying the charged-off energy account (SOR 1.d, \$240) with his income tax refund.

A summary of Applicant's judgment, accounts charged off, accounts placed for collection, and other unpaid obligations and their current status follows:

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<sup>3</sup> It is uncertain if this was Applicant's wife's truck or the truck of Applicant's son's wife.

	Creditor	Amount	Current Status
a	Charged-off credit card account. (Ex. 2, 3)	\$4,369	Unpaid. The same creditor is listed in the judgment listed in e. below. Applicant is uncertain if this is one obligation or two different obligations. (Tr. 29)
b	Charged-off account on a vehicle repossession. (Ex. 2, 3, Tr. 31)	\$9,395	Unpaid. In 2009, the creditor offered to settle for \$3,800, but Applicant was unable to accept the offer. (Tr. 28, 31)
c	Charged-off credit card account. (Ex. 2, 3)	\$5,747	Unpaid.
d	Charged-off utility account. (Ex. 3)	\$240	Unpaid. Applicant plans on using any federal income tax refund to pay this debt. (Tr. 29)
e	Judgment obtained in March 2009. (Ex. 2, 3, Tr. 51)	\$4,124	Unpaid.
	Total debt listed in SOR	\$23,875	

### **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. He has experienced financial problems for more than ten years. Applicant has an unpaid judgment and four delinquent accounts that total approximately \$23,000. He has paid none of the debts, even the \$240 utility bill. 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.

None of the mitigating factors for financial considerations fully mitigate the Applicant's financial security concerns. Applicant was questioned about his financial delinquencies in January 2012. Applicant was unsure whether debts listed in SOR 1.a and SOR 1.e were duplications of each other. I have chosen to mitigate the debt in SOR 1.a as a possible duplication of the judgment debt in SOR 1.e. The \$240 utility bill<sup>4</sup> remains unpaid. His financial difficulties are both recent and multiple. He produced no evidence of recent circumstances beyond his control, and he has not acted responsibly in addressing his debts.

Applicant's financial problems have existed for ten years and he is currently being contacted by the creditors of his delinquent accounts. When his financial problems first began, he and his wife received some financial counseling. Even with the counseling, his financial problems continue. AG ¶ 20(c) does not apply. He has failed to demonstrate that his financial problems are under control, or that he has a plan to bring

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<sup>4</sup> Applicant was not asked about this debt during his January 2012 PSI, but has known of the Government's concern about the delinquent utility bill since September 2013, when it was listed in the SOR.

them under control. He has not made a good-faith effort to satisfy his debts. AG ¶ 20(d) does not apply because he has made no payment on his delinquent debts.

Under AG ¶ 20(a), the debts were incurred some time ago, but remain unpaid. The judgment (SOR 1.e), entered against him five years ago in March 2009, remains unpaid. 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. He has no repayment plan to pay his delinquent accounts. He failed to act aggressively, timely, or responsibly to resolve his delinquent debts.

In 1998, Applicant had a heart attack. In 2007, he obtained his current position, which resulted in less income because he no longer received overtime pay. His financial problems were contributed to by his mother moving into his home. In 2008, six years ago, his mother died. He has had colon cancer that required a resection and he pays \$400 monthly out-of-pocket medical expenses following his surgery. His financial problems were contributed to by paying some of his son's debts, the raising of his grandson, and two unrelated people living for a time in his home. These are unexpected events largely beyond his control.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, I must still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.<sup>5</sup>

Since 1977, Applicant has not been unemployed. He has had financial problems for a long time and has known of the Government's concern over his finances since January 2012. Since that time, he has made no payments on any of the SOR delinquent obligations. By failing to make even minimal payments, he has failed to act responsibly under the circumstances. AG ¶ 20(b) does not apply.

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. He admits owing the debts, but disagrees with the amount the creditors claim is owed. I conclude Guideline F against Applicant.

### **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

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<sup>5</sup> ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999).

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 conduct. He has worked for the same employer for 37 years and has excellent duty performance. He has lived in the same home for 30 years. And, although never unemployed, has experienced medical problems that resulted in surgery and substantial (\$400) monthly medical costs. Applicant and his wife are not living beyond their means. He drives a 1991 pickup and his wife a 1998 automobile. He has provided support for his son, grandson, and has taken individuals into his home when those individuals were in need. The two non-relatives have now left the home and are no longer dependent on Applicant for financial support.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has known since January 2012 of the Government's concern about the majority of his delinquent accounts. He has failed to pay any of the debts during the two-year period since being interviewed. His 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.

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. In this case, none of the debts have been paid and no repayment plans have been arranged.

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 his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due



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

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CLAUDE R. HEINY II  
Administrative Judge