



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



In the matter of:)
)
) ISCR Case No. 12-02373
)
Applicant for Security Clearance)

Appearances

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

10/24/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has two unresolved debts the result of vehicle repossessions, which total more than \$31,000. Applicant has failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

History 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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on May 11, 2012, detailing security concerns under Guideline F, financial considerations.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

On May 29, 2012, Applicant answered the SOR and requested a hearing. On July 30, 2012, I was assigned the case. On September 4, 2012, DOHA issued a Notice of Hearing for the hearing held on September 19, 2012.

The Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through E, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On September 27, 2012, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. F. On September 25, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.b and ¶ 1.d. He admitted the remaining factual allegations. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 33-year-old production manager who has worked for a defense contractor since June 2009. From December 1998 to June 2002, he served in the U.S. Marine Corps, separating as an E-4. From June 2002 through November 2002, he was unemployed. (Tr. 26) In July 2003, he obtained a job with a defense contractor making \$13 per hour. (Tr. 34) He was making \$18 per hour when he went to a new company. (Tr. 34) In June 2009, the federal contract was not renewed and awarded to his current employer. In June 2009, his employment transferred directly from his prior employer to his current employer. (Ex. 4) In November 2011, his company moved him to casual status (unemployment) because he did not have a clearance. (Tr. 28) He was making \$30.50 per hour when moved to casual status. (Tr. 33) Since November 2011, he has been receiving unemployment compensation of \$852 every two weeks. (Tr. 36)

Applicant called no witnesses other than himself. He submitted character letters from coworkers and friends stating he is a hardworking, upright individual, a consummate professional, honest, loyal, dependable, reliable, and a man of integrity, with a strong moral code. His work ethic is outstanding. (Ex. A1- A9) His duty performance has also been outstanding and he has received promotions at work. (Ex. C)

In 2008, Applicant's spouse lost her job as an office manager. Her job had paid \$80,000 annually. (Tr. 25) Applicant was unable to pay the bills when the family income was reduced. (Ex. 3) After five or six months, she obtained a job as an administrative assistant making \$21 per hour, approximately half her previous salary. (Ex. 25, Tr. 35) In 2010, she was unemployed for two or three months. Applicant and his wife have two children ages 12 and 14. A nephew, age 14, also lives with them. (Tr. 28)

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The SOR contains three unpaid medical bills (\$215, \$364, and \$285). Applicant had hurt his back twice and one was for his wife's hospital visit. (Tr. 29) The three debts were being collected by the same collection agency.(Tr. 29) Applicant paid \$200 on this debt on July 2, 2012; July 16, 2012; and August 22, 2012. On September 2012, he made his final payment of \$222. (Ex. E, F)

In 2007, Applicant purchased two new 2007 Ford F-150 pickup trucks. (Tr. 43) One vehicle loan had a high credit of \$34,050 with \$751 monthly payments. (Ex. 5, 6) In November 2008, he had gotten behind on the payments for one of the trucks and returned it. He thought the vehicle was worth approximately \$15,000 when it was voluntarily repossessed. (Ex. 3) In February 2009, the creditor charged off \$20,646 on the debt. (Ex. 6) His November 2011 credit bureau report (CBR) lists the balance due as \$23,534. (Ex. 5) He still has the other 2007 truck and is current on the \$600 monthly payments. (Tr. 43, 44)

In May 2008, Applicant purchased a 2008 Ford Fusion, and his vehicle loan had \$550 monthly payments. (Tr. 42) The high credit was listed on his November 2011 CBR as \$8,118. (Ex. 5) He got behind on the payments and in September 2010, the vehicle was voluntarily repossessed. (Ex. 3) In October 2011, the creditor charged off \$7,795 on this loan. (Ex. 3)

As of December 2011, when interviewed by Office of Personnel Management (OPM) agent, Applicant had yet to contact these two lenders to attempt settlement of these debts. (Ex. 3) At the hearing, he had still not contacted either debtor on the vehicles because he had no funds to offer them. (Tr. 31, 32, 39) Earlier, the debtor on the truck debt had offered to settle for a lump-sum amount, which Applicant was unable to pay. (Tr. 39) Neither creditor is currently contacting him demanding payment.

Applicant maintains a budget. (Tr. 38) He is current on the \$300 monthly payments on his wife's 2007 Ford 500. (Tr. 44, 45) He is current on his rent and receiving no calls from creditors. (Tr. 45) He has not had any formal financial counseling, but has listened to financial-talk shows on the radio. (Tr. 48)

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 b c	Three unpaid medical accounts: \$215, \$364, and \$285.	\$864	Paid. Between July 2012 and September 2012, Applicant made four payments paying \$822 paying these debts. (Ex. E, F)

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	Creditor	Amount	Current Status
d	Collection account for a service cancelled during the free-trial period. (Ex. 3)	\$116	Paid. In April 2012, the creditor offered to settle for \$52.43. In May 2012, Applicant paid the full amount of the debt. (Ex. D, E, Tr. 30)
e	A charged-off account for a vehicle repossessed in November 2008.	\$23,886	Unpaid.
f	A charged-off account for a vehicle repossessed in September 2009.	\$7,795	Unpaid
	Total debt listed in SOR	\$32,661	

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.

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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 two unresolved debts resulting from vehicle repossessions. These two unresolved obligations total in excess of \$31,000. AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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The following six 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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant meets none of the mitigating factors as to the two debts, resulting from the vehicle repossessions. The debts went delinquent during periods of unemployment. However, he did not act responsibly under the circumstances, as he has not maintained contact with his creditors. Also, unemployment is not such a unique circumstance that it will not recur. Currently, Applicant is unemployed. The two unresolved debts cast doubt on the individual's current reliability, trustworthiness, or good judgment.

In 2002, Applicant was unemployed for six months after leaving the Marine Corps. In November 2011, his hourly wage was \$30.50 when his company moved him to casual status (unemployment) due to a lack of a clearance. From 2003 to November 2011, he had been continuously employed. He now receives unemployment compensation and payment on the repossessions is unlikely. (Tr. 36) In 2008, Applicant's spouse's job as an office manager ended and she was unemployed for five or six months before obtaining employment, which paid approximately half as much as her previous job. In 2010, she was unemployed for two or three months.

In 2007, Applicant purchased two new 2007 Ford F-150 pickup trucks. Both he and his wife were gainfully employed when the trucks were purchased. In November

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2008, during the period of his wife's unemployment, he voluntarily surrendered one of the trucks. In May 2008, Applicant purchased a 2008 Ford Fusion. In September 2010, following another period when his wife was unemployed, he voluntarily surrendered the vehicle. He has not contacted the creditors because he has no money to offer them.

Even though there are only two unresolved debts, I find AG ¶ 20(a) does not apply because the two unresolved obligations total in excess of \$31,000.

Applicant's unemployment in 2002 is too distant in time to have an impact on his current finances. His wife's 2008 and 2010 unemployment are circumstances beyond his control. However, for AG ¶ 20(b) to apply Applicant must show he acted responsibly under the circumstances. Following the 2008 repossession of the pickup truck, Applicant did not contact the creditor to establish a repayment plan even after his wife returned to work. Following the 2010 repossession, he did not contact either creditor as to the repossessed vehicles even though both he and his wife were working during 2010 and most of 2011.² He failed to act responsibly by not contacting the creditors when he and his wife were both working.

Applicant has listened to financial-talk shows on the radio, but has received no formal financial counseling. The two debts remain unpaid. AG ¶ 20(c) does not apply. Since receiving the SOR, Applicant has paid a \$116 debt (SOR 1.d) and paid \$822 to resolve three medical accounts (SOR 1.a, 1.b, and 1.c). AG ¶ 20(d) applies to these now paid debts. AG ¶ 20(e) does not apply because Applicant is not disputing the debts resulting from the two repossessions, only the amount owed. AG ¶ 20(f) does not apply because affluence is not the issue.

Since being questioned about his unresolved debts in November 2011, Applicant has paid less than \$1,000 on his delinquent accounts. He has more than \$31,000 in unresolved debt. He has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control. With his limited income, the two debts are likely to remain unresolved. 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 individual's age and maturity at the time of the conduct;
- (5) the extent to

² Applicant's wife was unemployed for two or three months in 2010. He was unemployed after November 2011.

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's letters of character indicate he is a good and upstanding person, and a hard worker with outstanding duty performance. He has addressed four small debts, but two large debts remain unresolved and are likely to remain so in the future. 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).)

Applicant's wife went through two periods of unemployment. However, once she had secured a new job, there was a period of inaction during which nothing was done to address the two delinquent debts arising from the repossessions.

While the periods of unemployment and reduced earnings by Applicant's spouse were factors beyond his control, he took no action to contact the two creditors or to arrange payment plans when they were both again employed full time. This raises concerns about his fitness to hold a security clearance.

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 warranted. Should he be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the two 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.d: **For Applicant**
Subparagraphs 1.e and 1.f: **Against Applicant**

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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

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