



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



In the matter of: )  
)  
) ISCR Case No. 12-08531  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales Esq., Department Counsel  
For Applicant: *Pro se*

10/31/2016

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**Decision**

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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. He had three collection accounts and a charged-off account, which totaled approximately \$19,500. Applicant has mitigated the personal conduct and the financial considerations security concerns. Clearance is granted.

**History of the Case**

On May 20, 2015, acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the DoD issued a Statement of Reasons (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 July 15, 2015, Applicant answered the SOR and requested a hearing. On October 22, 2015, I was assigned the case. On October 30, 2015, the Defense Office of Hearings and Appeals

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<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.

(DOHA) issued a Notice of Hearing for a hearing to be convened on November 18, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 4 were admitted without objection. Applicant testified, as did two other witnesses on his behalf, and provided three documents, Ex. A, B, and C, which were admitted without objection. The record was kept open to allow Applicant to present additional documents. Additional documents were received in January 2016 and May 2016, which were admitted without objection as Ex. D and E. On November 30, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

Applicant is a 60-year-old base engineer who has worked for a defense contractor since March 2012, and he seeks to retain a security clearance. (Ex. 1, Tr. 17) He was unemployed from October 2009 through March 2010, November 2004 through January 2005, November 2003 through June 2004, and November 2002 through June 2003. (Ex. 1, 4) He is currently married, having married in May 2005. He was previously divorced in October 1989, September 2001, and October 2003. (Ex. 1) He has two daughters ages 10 and 37. (Ex. 1) He honorably served in the U.S. Air Force from October 1974 through January 1979. (Ex. 1, SOR Response) He is currently a non-commissioned officer in the state national guard at a local Air Force base. (Tr. 84-85)

On Applicant's March 5, 2012 Electronic Questionnaires for Investigations Processing (e-QIP), he listed four delinquent accounts and a home foreclosure. He states the reason for the delinquent accounts was his employer lost a contract resulting in him being laid off and his wife, an accountant, also being laid off from her position with the city in October 2009. (Ex. 1) At that time, his annual salary was \$76,000 and his wife's annual income was \$48,000. (Tr. 22) A year prior, Applicant and his wife had refinanced their home from a 30-year mortgage to a 15-year mortgage in order to pay off the debt sooner. (Tr. 23) They were unsuccessful in attempting to sell their home. (Tr. 23)

The amount owed on the home was \$158,000 less \$108,000 in damage to the home while in the bank's possession. (Ex. 4) The damage occurred after Applicant vacated the home. (Ex. 4) After the foreclosure, Applicant received a \$600 refund from the bank holding the mortgage. (Tr. 26) No demand notifications have been received following the foreclosure. (Tr. 27)

In March 2010, Applicant and family moved to another state where he had obtained a job with an annual salary of \$89,000 and his wife's job paid \$55,000 annually. (Tr. 39) His job required extensive time away from home. He estimated his job kept him away from home 90 percent of the time, which made it difficult to move to a different rental property had he so chosen to do so. (Tr. 43)

Applicant denies the collection account listed in SOR 1.a (\$7,685). He rented a home that he later learned had serious water problems. Also, unknown to the Applicant

when he moved in, was that the house had suffered major fire damage five years earlier, in 2005. (Tr. 37) Applicant provided documentation showing numerous correspondences with the landlord attempting to resolve serious problems with the property. (SOR Response)

In November 2010, a massive flood of the downstairs did more than \$15,000 of damage to Applicant's property. Rain runoff resulted in water 1" to 2" deep in the house. (SOR Response) The landlord failed make adequate repairs to the home or to properly take care of the water damage resulting in mold growth. The mold caused Applicant to suffer from a fungal pneumonia infection. Applicant asserts the damage to his health resulted in loss of more than \$57,000 in wages. His medical treatment lasted several months. (SOR Response)

Applicant's friend, who testified at the hearing, was in the home on numerous occasions when he observed the problems with the house. (Tr. 63) After staying in the home, his friend also began to experience medical problems. (Tr. 63 – 66) His friend also stated the home was in better shape when Applicant moved out than when Applicant moved into the home. (Tr. 67)

Following the 2010 water damage, Applicant gave notice that he would be forced to leave the home should any additional flooding occur. In 2011, the home again flooded, and in January 2012, there was significant water damage and mold growth in the downstairs bedroom. Applicant left the home in February 2012. Applicant cites the home as not being habitable as the reason for the breaking of the lease two months early. The landlord refused to return the security deposit (\$1,900) and demanded \$7,600 for repairs to the home. Applicant estimated water damages to his property exceeded \$86,000. (Ex. D) Applicant believes he left the home in a better condition than when he moved into the home. (Tr. 45)

For years Applicant attempted to sell a boat he owned. Over time the boat had deteriorated to the point it was worthless. He paid a marina approximately \$4,600 to have the boat destroyed. (Tr. 28) The marina agreed to accept \$250 monthly payments on the debt starting in March 2015. (Ex. D) He is current on his monthly payments. (Tr. 29)

Applicant received notice from the Internal Revenue Service (IRS) he owed approximately \$12,000 in taxes due to moving expenses and other payments made by his employer. (Tr. 53) He immediately paid \$2,500 and arranged to make monthly payments on the balance. (Tr. 27) He provided documents showing that between July 2014 and July 2015, he made eight monthly payments of \$250 each on a debt that had been reduced to \$3,141. (Ex. D) He asserts the entire IRS debt has now been paid. (Tr. 27, 54)

In November 2015, the creditor listed in SOR 1.b (\$7,663) offered to settle the debt for an immediate payment of \$4,598, 12 payments of \$510 each, or monthly payments of \$50. (Ex. D) Applicant chose to make \$50 monthly payments and provided

documentation of having made the December 2015 and January 2016 payments as required.

In January 2015, Applicant and the creditor listed in SOR 1.c (\$3,511) entered into a repayment agreement. Applicant made an initial \$450 payment with monthly payments of \$156.96 to start in March 2015. (Ex. D)

Applicant acknowledges the \$7,664 collection debt listed in SOR 1.b, which was a credit card debt he used while fixing up his home with intentions of selling the home. His wife was attempting to work with the creditor to establish a repayment plan. (Tr. 41) He intends to pay this debt after paying the debt listed in SOR 1.c. (Tr. 30) He called the original creditor of the charge-off account listed in SOR 1.d (\$703) numerous times and was informed the account obligation could not be located. The creditor refused to accept payment on the obligation because they have no account listing Applicant. He is willing to pay this debt if the creditor is willing to accept payment. (SOR Response)

Applicant drives a 2005 vehicle and his wife a 2001 vehicle. He is current on his payments. He pays \$1,050 monthly rent. (Tr. 32) His annual income is \$75,000 and his wife's annual salary is \$42,000. (Tr. 32) He has approximately \$10,000 in a 401(k) retirement plan. (Tr. 57) In the past, he has liquidated assets to pay his bills. (Tr. 59)

Applicant's coworker and supervisor stated Applicant is very intelligent, ethical, and trusted. (Tr. 71) When a manager left, Applicant was recognized as the best incumbent to fill the position. (Tr. 70) Applicant's actions have provided significant energy savings to the DoD. (Tr. 72)

### **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 national 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 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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 under agreed upon terms. Absent evidence of strong 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 had three collection accounts and a charged-off account, which totaled approximately \$19,500. 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.

In 2009, Applicant began to experience financial problems when he lost his job paying \$ 76,000 annually, and his wife lost her job paying \$ 48,000 annually. Applicant has had four periods of unemployment in the recent past: October 2009 through March 2010; November 2004 through January 2005; November 2003 through June 2004; and November 2002 through June 2003.

Applicant attempted to pay the \$703 charged-off account (SOR 1.d) and has contacted the creditor numerous times in an attempt to do so. However, the creditor has no record of the delinquent account. Applicant has a repayment agreement with the creditor listed in SOR 1.c and is making timely payments on that debt. He made timely monthly payments to the IRS, paying off a \$12,000 debt, and is current on his \$250 monthly payments to a marina. These two non-SOR debts show he has previously been or is timely addressing other financial obligations. Two SOR debts remain unpaid. He has documented a long history of problems with the landlord who asserts the collection

obligation in SOR 1.a. While living in the home, Applicant experienced significant water damage and health problems caused by mold and water damage that the landlord failed to correct. Applicant left the home when it became uninhabitable. Applicant intends to pay the remaining SOR obligation (SOR 1.b) as soon as he has paid the SOR 1.c obligation.

Under AG ¶ 20(a), the debt in SOR 1.a occurred under unusual conditions unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. That water damage and mold resulted in sizable property loss to Applicant and also health damage resulting in loss of income. Applicant also experienced four periods of unemployment. The water damage, health problems, and unemployment are conditions beyond his control that resulted in his financial problems. AG ¶ 20(a) and AG ¶ 20(b) apply.

Under AG ¶ 20(c) and ¶ 20(d), as previously stated, Applicant has reached a settlement agreement with the holder of the delinquent collection obligation listed in SOR 1.c. He would like to pay the \$700 charged-off account in SOR 1.d, but the creditor shows Applicant does not have an outstanding delinquent debt. He is making his required monthly payments for the debt in SOR 1.c. He also made the required monthly payments on his IRS obligation and is making his payments to the marina. Although these are non-SOR obligations, having made timely payments on these obligations gives assurance that he will continue to make timely payments on his current repayment agreement. AG ¶ 20(c) and ¶ 20(d) apply.

Once the debt in SOR 1.c is paid, Applicant intends to pay the debt in SOR 1.d. In evaluating financial considerations security concerns, the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. An applicant is not required to establish that he has paid off each debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The entirety of an applicant's financial situation and actions in evaluating applicant's plan for the reduction of his outstanding indebtedness must be considered. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. A reasonable plan may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. Applicant has established a track record of debt payment, and financial considerations security concerns are mitigated.

### **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 has experienced financial problems due to unemployment and also significant problems with a home he rented. He is not living beyond his means. He has a 2005 vehicle and his wife has a 2001 vehicle. The only SOR obligation he has yet to address is for approximately \$7,600. His payment history indicates he will continue making timely, monthly payments on his debts until the obligations are paid.

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). Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance.

### **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 through 1.d: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge