



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



In the matter of: )  
)  
) ISCR Case No. 12-09283  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales Esq., Department Counsel  
For Applicant: John Mastriani, Esq.

09/27/2016  
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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. Applicant has mitigated the personal conduct and the financial considerations security concerns. Clearance is granted.

**History of the Case**

On January 13, 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 February 14, 2015, Applicant answered the SOR and requested a hearing. On October 1, 2015, I was assigned the case. On October 30, 2015, the Defense Office of

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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.

Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on November 19, 2015. That notice was amended and the hearing was held on November 17, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 4 were admitted without objection. Applicant testified, but provided no documents. The record was kept open to allow Applicant to present additional documents. Additional documents were received and admitted without objection as Ex. A. On November 25, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

Applicant is a 55-year-old senior staff system engineer who has worked for a defense contractor since November 2005 and he seeks to retain a security clearance. His annual salary is \$123,553. (Ex. 2) He has been married since January 1992 and has two children and one step-son, ages 22, 24, and 37. (Ex. 1)

In Applicant's October 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he listed four delinquent credit card accounts and stated one of the accounts had been paid. In 2009, those accounts became delinquent when his wife lost her when the hospital closed. (Tr. 26, 27) Previously her annual salary was \$64,000 a year. (Tr. 28)

The SOR lists a single judgment as a debt of concern. On November 28, 2011, a \$30,742 judgment was obtained by a credit card company, not one of the four listed on Applicant's e-QIP. (Ex. A) Applicant had opened the account in 2001 and it became late in 2010. (Ex. 2) Applicant employed a financial company to negotiate settlement on the debt, which was a serious mistake. (Tr. 17) Between December 2009 and March 2014, he paid the company approximately \$14,000. (Ex. 2) The company received \$1,500 for their services. (Tr. 18) In October 2010, the finance company negotiated and paid one of the credit card obligations Applicant had listed in his e-QIP. (Ex. 2)

The finance company negotiated with the holder of the judgment and the credit agree to settle the matter for \$13,680. (Ex. 2) The arrangement required a \$1,500 payment on September 1, 2012, and monthly payments of \$1,015 thereafter. However, the company wrongfully took Applicant's money and failed to pay the judgment holder. The individual to whom the money was given absconded with the funds. (Tr. 12) When Applicant brought the matter to the attention of state authorities, he was told that the statute of limitation had passed and they could give him no assistance. (Tr. 20)

Having failed to get satisfaction from the finance company, in February 2015, Applicant hired an attorney to help him address the judgment. (Tr. 13) On December 1, 2015, Applicant and the judgment holder agreed to settle the matter for \$15,371. (Ex. A) Applicant's first payment of \$628 was to be made on or before December 17, 2015, which he paid on December 4, 2015. (Ex. A) Beginning in January 2016, the monthly payments would increase to \$641 until the settlement amount was paid in full. Applicant

began the increased payments early. He made payment on December 4, 2015, and also provided proof he made the January 2016 payment. (Ex. A)

In July 2012, Applicant discussed the judgment, actions taken concerning that judgment, and other delinquent accounts during a Personal Subject Interview (PSI). In July 2014, in response to financial written interrogatories, he again stated the financial company had wrongfully taken his money. As of July 2014, it was his plan to fix up his home and put it on the market. When the house sold, he would pay the judgment. (Ex. 2) He no longer intends to sell his home, but intends to make monthly payments on the settlement agreement. As of July 2014, he had a net monthly remainder (gross monthly income less monthly expenses and monthly debt payments) that exceeded \$2,000. (Ex. 2)

Applicant's March 2012 credit report lists the judgment that had previously been a collection account. (Ex. 3) The credit card account that was settled was listed as a collection account as was one additional collection account that Applicant had also listed on his e-QIP. That credit report lists 26 additional accounts that were paid as agreed. (Ex. 3) His August 2013 credit report lists the negotiated credit card payment as paid in full for less than the full balance, listed the judgment creditor, and lists 36 additional accounts as either being paid as agreed or were in good standing. (Ex. 2) Applicant's July 2014 credit report lists 26 accounts with a zero balance. (Ex. 4) He is current on his mortgage, vehicle payments, and credit card accounts. (Tr. 40)

## **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.

In November 2011, a \$30,742 judgment was entered against Applicant. 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 his wife lost her job that had paid \$64,000 annually. In 2009, he hired a financial company to assist him in negotiating with his creditors on his five delinquent accounts. Between December 2009 and March 2011, he paid the company \$14,000. The company negotiated and paid a delinquent credit card account.

In November 2011, a judgment was obtained against Applicant, which is the only debt of concern listed in the SOR. The finance company was able to negotiate with the holder of the judgment wherein the holder agreed to accept settlement in the amount of \$13,680. After negotiating the settlement agreement, the financial company absconded with more than \$11,000 of the funds Applicant had to resolve the judgment.

In February 2015, Applicant hired an attorney to assist him in obtaining a new settlement agreement. In December 2015, the holder of the judgment agreed to accept

a settlement amount of \$15,371 to be paid in monthly amounts. Applicant is making his monthly payments.

Under AG ¶ 20(a), only one delinquent account is listed as being of concern, which indicates Applicant's financial problems were limited in scope. The three credit reports all indicate between 26 and 36 of his accounts were paid satisfactorily or were in good standing. In addition to the judgment, there was one collection account he listed in his e-QIP and one collection account that was paid in full for less than the full balance. Applicant's financial problems were contributed to by the loss of his wife's job and by the finance company absconding with more than \$11,000 of the money he had paid the company. Those are factors beyond his control. He has entered into a new settlement agreement and is making his required payments, which shows good faith. 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 judgment and is making his required monthly payments. He is living within his means and meeting his current financial obligations. There is clear indication his financial problems have been resolved and his finances are under control. He has initiated a good-faith effort to repay the judgment. AG ¶ 20(c) and ¶ 20(d) 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 has held his current job for more than ten years. Applicant had a judgment and delinquent credit card debt. A settlement agreement was reached on the credit card debt and the obligation paid. He has reached a settlement on the judgment obligation and is making payments in accord

with that agreement. Other than the three delinquent accounts, two of which have been paid and one of which is being paid, all the other accounts listed in his credit reports indicate he pays his debts timely. But for the loss of his wife's job and the absconding of his money by the financial company, it is likely that he would have reached a settlement agreement with the judgment holder years ago and paid the judgment.

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 with 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

Subparagraph 1.a: 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