



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-02171 <sup>1</sup>
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

04/04/2017

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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 nine delinquent medical accounts and a judgment, which together totaled approximately \$17,000. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

**History of the Case**

On November 13, 2015, acting under the relevant Executive Order and DoD Directive,<sup>2</sup> the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant’s security clearance. On December 8, 2015, Applicant answered the SOR and requested a hearing. On July 28, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of

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<sup>1</sup> Department Counsel moved to correct the case number on the Statement of Reasons to which Applicant had no objection. (Tr. 11-12) The correction was made.

<sup>2</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.

Hearing for a hearing to be convened on August 24, 2016. The hearing was convened as scheduled.

At the hearing, Government's Exhibits (Ex.) 1 through 5 and Applicant's Exs. A through C were admitted without objection. Applicant testified at the hearing. Following the hearing, five additional documents were received and admitted without objection as Exs. D through H. On September 1, 2016, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's answer (Answer) to the SOR, he admitted all but one of the SOR debts. He asserted he had paid the judgment and six of the nine delinquent accounts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, submissions, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 58-year-old warehouse manager who has worked for a defense contractor for eight months. He seeks to retain a security clearance. (Ex. 1, Tr. 12) He previously worked for a defense contractor starting in February 1991. (Ex. 1) His annual salary is \$41,600. (Tr. 30) A co-worker who has known Applicant for 26 years states Applicant is a professional and trustworthy individual of the highest integrity, an upstanding citizen, and proactive member of the community. (Ex. A)

Applicant's wife developed cancer and required treatment and hospitalization prior to her July 2008 death. (Ex. 2, Ex. B) She was laid off from her work prior to her death. She was the family member carrying health insurance, and when she stopped working the medical insurance stopped. (Tr. 27) Applicant currently has health insurance through his employer. (Tr. 33) The loss of his wife's income affected their finances. (Tr. 25) A week after his wife died, his father also died. (Tr. 25)

In 2008, a \$278 judgment (SOR 1.g) was entered against Applicant for unpaid taxes. (Ex. 2, Tr. 20) He paid the tax debt and the judgment was released. (Ex. G) During a November 2014 enhanced subject interview, Applicant was questioned about his finances. (Ex. 2) The judgment and nine delinquent medical debts were discussed.

Attached to Applicant's SOR answer was a September 2014 letter indicating the delinquent accounts in SOR 1.b (\$323), SOR 1.c (\$190), SOR 1.d (\$187), and SOR 1.f (\$49) were paid in full. (Answer) The letter also states that three accounts totaling \$419 with radiology imagery medical provider was also paid in full. (Answer) In February 2016, he paid the delinquent accounts listed in SOR 1.e (\$184) and SOR 1.i (\$169). (Ex. E, F, Tr. 21)

Applicant contacted the collection agency about the delinquent medical account listed in SOR 1.h (\$14,874). In discussing the debt with the collection agency, he was told the account would be closed and collection agency would take no further collection activity on the debt if he provided a copy of his wife's death certificate, which he did. (Ex. H, Tr. 20)

Applicant attempted to locate the creditors of the delinquent medical accounts listed in SOR 1.a (\$808) and SOR 1.j (\$68), but was unsuccessful. (Tr. 15) Applicant is more than willing to pay the debts, but cannot locate who currently hold the accounts. (Tr. 19)

Applicant's July 2014 credit report lists 37 accounts being paid as agreed, as well as the \$287 judgment and seven medical collection accounts. (Ex. 5) His February 2015 credit report lists six medical collection accounts. (Ex. 4) His April 2016 credit report lists only two medical collection accounts, the debt listed in SOR 1.e (\$184), which was paid in February 2016, and a \$51 imaging medical account. (Ex. 3) Applicant does not have an uncommon name and his July 2016 credit report lists three locations unrelated to him, which raises a question as to the accuracy of the reports. (Ex. C, Tr. 11) There were three collection accounts on his July 2016 credit report: a cable bill that was not his,<sup>3</sup> the \$51 medical account, and the \$169 debt (SOR 1.i), which he paid in February 2016. (Ex. C and F)

Applicant has more than \$104,000 in a 401(k) retirement account. (Ex. D, Tr. 31) He is current on his credit card accounts, automobile payment, insurance, and utilities. (Tr. 30) Following his wife's 2008 death, he put himself on a plan to keep all his month-to-month obligations current. (Tr. 30) He is not getting any calls or letters from creditors demanding payment. (Tr. 30)

## **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

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<sup>3</sup> The cable bill was for another person of the same name at an address where Applicant never lived. (Ex. H)

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 several medical collection accounts totaling approximately \$17,000. As of the issuance of the SOR in November 2015, he had not paid or adequately disputed his liability for the debts in SOR 1.a, 1.h, and 1.j, which totaled \$15,750. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations” apply.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had owed eight delinquent medical accounts that totaled less than \$2,000, a judgment of less than \$300, and one additional delinquent medical debt of approximately \$15,000. He has paid the judgment, six of the delinquent accounts, and was unable to locate the creditors for the debts listed in SOR 1.a (\$808) and SOR 1.j (\$68). The collection agency attempting to collect the largest medical debt (SOR 1.h, \$14,874) agreed to stop collection actions when Applicant sent them a copy of his wife's death certificate, which he did. He is not receiving calls or letters from creditors demanding payment. The only negative entry that is his on his most recent credit report is a \$51 medical account. He has addressed the delinquent accounts.

Considering AG ¶ 20(a), Applicant's financial problems were contributed to by losing medical insurance when his wife lost her job prior to her death. All but one of the SOR debts were medical debts related to his wife's medical treatment and hospitalization. He has acted reasonably in addressing his delinquent obligations. ¶¶ 20(a) and 20(b) apply. Having paid his medical collection debts, there is a clear indication the problem is resolved and his finances are under control. AG ¶ 20(c) and ¶ 20(d), apply. The sole remaining derogatory entry on his most recent credit report is a

\$51 medical account, which was not listed as a debt of concern in the SOR. Since Applicant has addressed his other debts, I believe Applicant will pay this small debt.

### **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. The total amount of Applicant's delinquent debt was relatively small, i.e., less than \$17,000. He has addressed those accounts by paying the majority of them, trying to locate two of them, and the collection agency agreeing, after discussing the matter with Applicant, to no longer pursue collection of the largest delinquent medical debt. He is not living beyond his means. He has \$104,000 in a retirement account, is current on his credit card accounts, automobile payment, insurance, and utilities. He maintains a plan to keep all his month-to-month obligations current.

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, Guideline F, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.j: 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