



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



In the matter of: )  
)  
) ISCR Case No. 15-02657  
)  
Applicant for Security Clearance )

**Appearances**

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

03/09/2017

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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 a judgment, a charged-off account, and five collection accounts that totaled almost \$20,000. He has favorably addressed all of his delinquent obligations. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

**History of the Case**

On December 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 was clearly consistent with the national interest to grant or continue Applicant's security clearance. DOHA received Applicant's January 21, 2016 SOR answer and his request for a hearing. On May 5, 2016, I was assigned the case. On May 17, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing convened on June 7, 2016.

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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.

At the hearing, Government's Exhibits (Ex.) 1 through 6 were admitted without objection. Applicant testified, as did his spouse on his behalf, and provided four documents, Ex. A through D, which were admitted without objection. The record was kept open to allow Applicant to present additional documents. Additional documents were received and admitted without objection as Ex. E through J. On June 16, 2016, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's answer (Answer) to the SOR, he denied a charged-off account and a collection account totaling approximately \$12,000. He admitted to the remaining delinquent obligations. Applicant's admissions are incorporated as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 56-year-old instructor/senior technical support engineer who has worked for a defense contractor since November 2012, and he seeks to retain his security clearance, which he has held since 1979. (Ex. 1, 6, Tr. 23, 24) From May 1979 through November 2000, he served honorably in the U.S. Army retiring as a sergeant first class (E-7). (Tr. 23) The U.S. Department of Veteran's Affairs rates Applicant's disability at 60 percent. (Tr. 24) His taxable annual retirement is approximately \$16,000. (Ex. C, D) His current wife<sup>2</sup> is not working outside the home. The household's adjusted gross income for tax year 2014 was \$75,400 and for tax year 2015 it was \$79,938. (Ex. D-1, D-3)

Applicant married in March 1992 and divorced in 2009. His wife was very sick and, in 2010, they chose to remarry because he had TRICARE coverage and civilian health insurance coverage. (Tr. 32, 35) In August 2012, they again divorced. (Ex. 1) Following his wife's death, he received two medical collection accounts (SOR 1.b, \$1,113, and SOR 1.c, \$ 62). Even though he had medical insurance, he chose to pay \$600 on the accounts. The creditor lists the accounts as being "settled in full." (Ex. B, E Tr. 32)

Applicant contacted the creditor of the medical collection account listed in SOR 1.d (\$1,024) and was told the account had a zero balance. (Tr. 33) Applicant believes it took a while for the insurance providers to pay the medical bill. (Tr. 34) This obligation is listed on his September 2014 credit report, but not on his October 2015 or March 2016 credit reports. (Ex. 2, 3, 4)

In October 2014, Applicant sought the services of a credit solution company and commenced paying \$435 monthly. (Ex. A, E, F, Tr. 29) He later raised the monthly amount to \$600, which was made by automatic deduction. He made payments until March 2015. (Ex. F) The arrangement was for the company to collect the money and then negotiate with Applicant's creditors to settle his outstanding obligations. (Ex. A) The service charged approximately \$60 in monthly fees plus approximately \$2,000 in

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<sup>2</sup> Applicant married his current wife in October 2014. (Tr.49)

initial fees. (Ex. F) The company was able to negotiate and pay some of the debts. However, as of March 2015, he had approximately \$9,000 on deposit with the company and he was attempting to bring pressure on the company to make payment on his delinquent obligations. (Ex. F, Tr. 30) When the company failed to make additional negotiations and payments, he terminated his agreement with the company. (Tr. 31)

After two and one half years with the credit solution company his wife told him they could do the same thing the credit solution company was attempting to do and he terminated his agreement with the company. (Tr. 30) He contacted his creditors, arranged settlement agreements, and honored those agreements. The \$9,960 charged-off bank auto loan debt (SOR 1.g, \$9,960) was settled for \$4,046 and paid on April 2015. (Ex. G) The creditor of a \$1,743 telephone provider debt (SOR 1.f) considers the debt resolved following payment per an agreement. (Ex. B, J) Applicant paid \$4,800 to pay the \$4,972 judgment listed in SOR 1.a. (Ex. B)

Applicant incurred a \$739 (SOR 1.e) debt to a television/cable company. He did not have service with the company, but his ex-wife did. Even though it was not his debt, he chose to pay it. (Tr. 34) Applicant asserts the vehicle repossession debt (SOR 1.g, \$9,960) was for a vehicle his ex-wife purchased in her own name during the time they was divorced. (Tr. 35) Although he did not co-sign on the vehicle, he paid \$5,000 on the debt through the credit solution company. (Tr. 35, 45) In April 2015, Applicant accepted the creditor settlement offer and pay \$4,046, as discussed above. (Ex. G)

Applicant paid two other non-SOR debts. A \$2,167 debt was settled for \$866 and paid on January 23, 2014. (Ex. H) A \$547 debt was settled for \$273 and paid on March 24, 2015. (Ex. I) Applicant is current on his credit cards, which were obtained to help him rebuild his credit. (Tr. 53) He is current on his rent and utility bills. His vehicles are all paid for. (Tr. 55)

## **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 a judgment, a charged-off account, and five collection accounts that totaled almost \$20,000. 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.

All of the listed SOR delinquent obligations have been paid. Applicant chose to pay a number of the SOR debts that he likely could have avoided because they were not his debts. He had health care coverage from two providers, but he chose to pay the medical collection accounts incurred for his then wife's medical treatment. He contacted another medical collection account creditor and was told by the provider he owed nothing on the account. He assumes his insurance paid the bill. He also paid the creditor following the repossession of his ex-wife's car.

In October 2014, Applicant sought the services of a credit solution company and commenced to paying \$435 monthly by automatic deduction. He later raised the amount

to \$600 monthly. The company was able to negotiate and pay some of the SOR debts. It paid SOR 1.b, 1.c, 1.f, and 1.g. When a large amount of funds were held by the company and the company was not negotiating additional settlements, Applicant terminated the contract. He then paid the remaining SOR delinquent obligations. This shows good faith by Applicant long before he received the SOR.

Under AG ¶ 20(a), a number of debts were the result of his ex-wife's illness and the insurance companies failing to pay the debts. These debts were occurred under unusual conditions in that a number of the SOR debts were not his debts, but those of his ex-wife. Now that his ex-wife is dead, it is unlikely additional debts will be incurred. These debts do not cast doubt on Applicant's current reliability, trustworthiness, and, he has shown good judgement in choosing to pay these obligations. He has acted reasonably. AG ¶ 20(a) and AG ¶ 20(b) apply.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has satisfactorily addressed each of the SOR delinquent obligations. His vehicles are paid for; he is current on his rent, utilities, and credit card obligations. He does not have any financial problems. AG ¶ 20(c) and ¶ 20(d) apply. 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. The SOR delinquent obligations were not many and four of the seven debts were his ex-wife's obligations, all of which he paid. Applicant satisfactorily addressed each of the SOR debts. He is not living beyond his means. He served honorably in the U.S. Army retiring as a sergeant first class and has a 60 percent disability rating from the VA for his service.

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.g: 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