



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03397
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

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 is delinquent on collection and charged-off accounts, a judgment, two vehicle repossessions, unpaid federal taxes, overpayment of state unemployment compensation, and a home foreclosure. He has more than \$46,000 in delinquent debt. He asserted, but failed to document, that he paid his delinquent federal tax obligation and is repaying the state unemployment compensation. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on October 30, 2014, the DoD issued a Statement of Reasons (SOR) detailing financial considerations

<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*

security concerns. On November 16, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated July 9, 2015. The FORM contained six attachments (Items 1-6). On August 26, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. His response was due on September 25, 2015. On October 15, 2015, Applicant stated he had no objections or additional information to provide as to the material he had received. On November 11, 2015, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted owing all but two of the delinquent debts. He asserted he paid his federal income tax debt (SOR 1.o, \$1,618) and had established a repayment plan to repay his unemployment compensation debt (SOR 1.p, \$10,729) I incorporate Applicant's admissions as to the delinquent obligations, but not as to his assertions of payment, as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 41-year-old trade assistant who has worked for a defense contractor since February 2013 and seeks to obtain a security clearance. (Item 3) Since November 2011, he has worked two days a week as a ramp agent. In March 2011, he was divorced ending his ten-year marriage. (Item 3) He has two children, ages 10 and 14. (Item 3) He asserts is not required to pay child support or spousal support. (Item 6) He provided no information about his duty performance and provided no character reference letters.

From February 2001 through May 2009, Applicant worked for a health and rehabilitation center. In May 2009, he was transferred to a subcontractor. Shortly after the transfer, he quit when informed he would be fired. He incorrectly received unemployment compensation (SOR 1.p, \$10,729) after leaving the job. In December 2009, the state requested the return of the funds. (Item 6) From February 2010 to January 2011, he made \$400 monthly payments to repay the debt. In March 2013, his wages at his part-time job were garnished, and, as of March 2013, \$50 had been taken from his pay. (Item 6) In March 2013, Applicant had a personal subject interview (PSI). (Item 6) At that time, he said he intended to contact the state and restart the \$400 monthly payments. He asserts he is currently making payment on this debt. However, the FORM stated Applicant had provided no receipts or evidence of regular payment on the debt. He was informed he could submit a documentary response to the FORM. In his response, he stated he had no additional information.

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(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

In 2009, Applicant had a job from May through September 2009. (Item 6) When he became unemployed, he left the state and moved to a location closer to relatives. From December 2009 through February 2011, he worked as a pipefitter at a shipyard. (Item 3) From February through June 2011, he was unemployed. From June through September 2011, he again worked as a pipefitter. From September 2011 through November 2012, he was unemployed. (Item 3)

In 2003, Applicant's now ex-wife purchased a home for \$132,000. In 2005, Applicant and his then-wife refinanced the home with two mortgages of \$173,000 and \$44,000, with a combined monthly mortgage payments of \$1,600. (Item 4, 6) In November 2008, the larger mortgage holder offered to reduce the monthly mortgage payments to \$800. (Item 6) Applicant was more than \$57,000 past due on this mortgage. (Item 4) A financial settlement was accepted on the \$44,000 owed on the smaller mortgage. (Item 4) In December 2009, Applicant and his wife separated, and he stopped making mortgage payments, and the house went to foreclosure (SOR 1.q). (Item 6)

Applicant had two vehicles financed through a credit union that were voluntarily repossessed. (Item 6) One was repossessed in 2010.<sup>2</sup> He has made no payments on the amounts owed (SOR 1.c, \$4,279 and SOR 1.d, \$3,201) after 2009, when he moved to a new state. Applicant owed \$3,000 in federal income tax for tax year 2010. (Item 6) Following the interception of a tax refund, the amount owed was reduced to \$1,618 (SOR 1.o) He asserts he has paid this debt, but provided no documentation showing payment.

On Applicant's March 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he listed 11 of the SOR delinquent accounts, including a \$150 medical debt. (Item 3) In Applicant's March 2013 Personal Subject Interview (PSI), his delinquent accounts were discussed. He recognized many of his delinquent obligations. At that time, he stated he had no credit cards, owes no money on his car, and had not received financial counseling. He intended to seek legal advice as to his delinquent obligations. (Item 6) He thought he might need to seek Chapter 7 bankruptcy protection.

The delinquent SOR obligations are set forth in Applicant's April 2013 and May 2014 credit reports. (Items 4, 5) Additionally, Applicant acknowledged owing the debts except for his delinquent tax obligation, which he said he paid and the repayment of the unemployment compensation, which he said he was repaying. (Item 2) The SOR includes four charged-off accounts, eight collection accounts, a \$460 judgment, delinquent taxes, a home foreclosure, two vehicle repossessions, and unemployment compensation repayment, which total more than \$46,000. (Item 1)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

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<sup>2</sup> The date of the second repossession is not clear from the file.

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 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 (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 *a/so* 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 or her 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 is more than \$46,000 past due on two voluntary repossessions, a judgment, four charged-off accounts, eight collection accounts, and is delinquent on repayment of unemployment compensation. 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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer since February 2013 and with a part-time employer since November 2012. In April 2013, he was made aware of the Government's concerns about his delinquent debt when questioned about his delinquent obligations during his PSI. He acknowledged many of the delinquent obligations and indicated he was going to seek legal assistance to help him address his delinquent debts.

Applicant asserted he paid his federal tax obligation for tax year 2010 and was repaying his unemployment compensation debt. However, he provided no documentation supporting his assertions. He was informed in the FORM he could provide additional documents, but in his response to the FORM, he stated he was not providing any additional documents. He provided no information showing he paid any of the obligations or any documentation concerning legal services or advice he received. There is no documentation that even the \$150 medical debt had been addressed.

Applicant provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. In 2009, he was fired from his job and was unemployed for four months. He was then employed for 14 months before being unemployed for four months in 2011. He was also unemployed from September 2011 through November 2012. Additionally, in 2009, he separated from his wife and divorced in March 2011. Having learned of the Government's concern over his delinquent obligations in April 2013, he has not provided documentation showing he has made any payments on his debts. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies, but is insufficient to mitigate the security concern. He was divorced in March 2011 and periodically unemployed between May 2009 and November 2012. These are events beyond his control. However, he failed to document how those events of more than three and almost five years ago affect his current finances. By failing to show any payments, he has failed to show he has acted responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. There is no showing his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts even though he asserted he had paid his delinquent tax bill and was repaying his unemployment compensation obligation. The mitigating condition listed in AG ¶ 20(e) does not apply because he had admitted the obligations and is not disputing them.

### **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 failed to document any payment on his delinquent accounts. He was made aware of the Government's concern about his delinquent debts by his April 2013 PSI, the October 2014 SOR, and the July 2015 FORM. Even the \$150 medical debt has yet to be paid. There is no documentation any delinquent debts have been paid or that he has had recently contacted his creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By relying solely on the scant explanation in response to the SOR, he failed to mitigate the financial considerations security concerns.

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 recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

### **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.q: Against Applicant

### **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.

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CLAUDE R. HEINY II  
Administrative Judge