



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



In the matter of: )  
)  
) ISCR Case No. 18-00797  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*  
03/12/2019

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on July 11, 2016. On April 3, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on May 18, 2018, and requested a hearing before an administrative judge.

I was assigned to the case on October 23, 2018, and I issued an order to both parties to produce their documentary evidence by November 2, 2018. On October 23, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 14, 2018. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 5 were admitted, without objection. Applicant testified, and Applicant's Exhibits (AE) A through G were admitted, without objection. I received the transcript (Tr.) on November 26, 2018. I held the record open until December 17, 2018, to allow Applicant to submit additional documentation. He timely submitted AE H and I, which are admitted without objection, and the record is closed.

## Findings of Fact

Applicant is 46 years old. He has worked as an armed security officer for a defense contractor since June 2016. He served on active duty in the U.S. Army from 2003 until 2007, when he was honorably discharged. He deployed to Iraq twice during his military service, and he held a Secret security clearance while he served on active duty. Applicant has been married since 1999, and he and his wife have two minor children. He received an associate's degree in 2002, and a certificate in railroad engineering in 2015. (Tr. 9-10, 25, 27, 29-31, 33-34, 111)

Applicant had some financial issues when he served on active duty in the U.S. Army. (Tr. at 28; GE 3) His current financial issues are related to several periods of voluntary and involuntary unemployment.<sup>1</sup> In 2015, while his wife was a full-time student, Applicant was laid off from his employer. She graduated in 2015, and then he went back to school. He testified that they mismanaged their finances during this period, but they now follow a budget. (Tr. 36, 41)

Applicant disclosed in his July 2016 SCA that he had two mortgage accounts that were in foreclosure status. The two accounts were for two separate homes in State A. He did not disclose any other debts in his SCA. (GE 1 at 37) During Applicant's November 2017 personal subject interview, he was confronted with the numerous, substantial, and significant debts. (GE 2) Many of these debts were alleged in the SOR.

There are 27 debts alleged in the SOR, and they total over \$73,000.

SOR ¶ 1.a was a mortgage debt. In 1999, Applicant and his wife purchased a home for approximately \$90,000 (Home 1). Their monthly mortgage payment was approximately \$550, and they were current on their payments for many years. In 2007, they decided to purchase a new home due to the deterioration of their neighborhood and the birth of their children. (Tr. at 38-39, 45, 48)

Applicant and his wife were unable to sell Home 1 before they purchased a second home (Home 2). Home 1 was worth \$40,000 when they tried to sell it, but they still owed \$70,000. They were able to rent Home 1 for several years and cover the mortgage payment. In 2015, they were unable to rent Home 1. Shortly thereafter, Applicant and his wife both found jobs in State B. As a result, Applicant and his wife attempted to sell both homes. They stopped making payments for Home 1 in May 2014, and about six or seven months later foreclosure proceedings were initiated. The bank sold Home 1 for \$20,000. Applicant does not owe any money for this property. (Tr. 37-45, 49, 52; GE 2 at 5; GE 4 at 5)

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<sup>1</sup> Applicant was unemployed during the following periods: November 2015 until June 2016; May 2014 until June 2015; December 2011 until June 2012; and April 2007 until June 2007 He spent this time acclimating to civilian life and being with his family.

SOR ¶ 1.b was a mortgage debt. In 2007, Applicant and his wife purchased Home 2 for \$237,000. Their mortgage payment was approximately \$1,700. This was a 30-year fixed mortgage through the Department of Veterans Affairs (VA). At the time that they purchased Home 2, they were earning approximately \$55 per hour collectively. Applicant and his wife stopped making payments in approximately August 2014 due to a lack of sufficient income. Applicant and his wife moved from State A to State B in May 2015. Shortly thereafter, the home was foreclosed upon and at that time the outstanding mortgage was \$200,000. The home was later sold by the bank for \$85,000. Applicant does not owe any money for this home. (Tr. 37, 45-47, 50-52; GE 2 at 5)

SOR ¶ 1.c. is a \$15,914 car loan and a duplicate of SOR ¶ 1.r. In 2009, Applicant purchased a 2007 car for approximately \$27,000. The monthly payment was over \$500. Applicant and his wife made payments until they moved from State A to State B in 2015. They left the vehicle in State A while they lived in State B from May 2015 until July 2016, when Applicant and his family moved back to State A. They voluntarily returned the vehicle to the dealer in approximately April 2017. The outstanding balance is \$14,340. Applicant has not made payments toward this debt since he moved to State B in May 2015, but he contacted the creditor in April 2018. (Tr. 19-22, 52-58, 61-64; GE 2 at 6; GE 4 at 3; GE 5 at 3; AE E; AE F)

Applicant and his wife purchased two used vehicles during the fall of 2017. He is currently driving a 2013 truck that he purchased for \$22,000. His wife drives a 2011 car that they purchased for \$25,000. Their aggregate monthly payments are approximately \$1,000. (Tr. 59-60)

SOR ¶ 1.d is a \$10,504 student loan that Applicant deferred while he was on active duty. After he left active duty, he made payments for several years until he experienced financial issues due to unemployment. In 2016, Applicant made four or five \$70 payments. He started making automatic \$55 monthly payments in April 2018. Applicant testified that in May 2018, he also made five weekly payments of \$150, which were automatically deducted from his paycheck. The debt alleged in SOR ¶ 1.d has decreased to \$8,948, and it was successfully rehabilitated after the hearing. (Tr. 17-18, 64-69, 100; GE 5; AE C; GE 2 at 6; GE 4 at 3; GE ; AE D; AE I)

SOR ¶ 1.e is a fourteen-year-old \$3,733 credit card debt that remains unpaid. (Tr. 70-71; GE 2 at 5; GE 4 at 3; GE 5 at 3)

SOR ¶¶ 1.f, 1.g, 1.j, 1.k, are student loans totaling \$9,188. None of these debts appear as delinquent on Applicant's credit bureau reports (CBR). Applicant believes they are duplicates of SOR ¶ 1.d. (Tr. 17-18, 64-69, 100; GE 3; GE 4; GE 5; AE B at 1)

SOR ¶¶ 1.h and 1.i are 2014 veterinary debts totaling \$3,267 for Applicant's family dog. The debts were incurred in 2015. He contacted the creditor after the SOR was issued, but the debts remain unresolved. (Tr. 71-74; GE 5 at 1-2)

SOR ¶ 1.i is a \$1,838 vehicle loan that Applicant obtained in August 2007, while he was on active duty. Applicant believes he paid the debt, but he did not provide proof of resolution. (Tr. 70-71, 78-79; GE 2 at 5; GE 4 at 5)

SOR ¶ 1.m is the \$824 annual maintenance fee for a timeshare Applicant and his wife inherited from her mother. Applicant paid the fee prior to their family vacation in February 2018. (Tr. 74-78; GE 2 at 5; GE 4 at 9)

SOR ¶ 1.n is a \$576 credit card debt that Applicant opened in 2011 and last made payments toward in 2013. He has not made payments, nor is it resolved. (Tr. 79; GE 2 at 5; GE 4 at 4)

SOR ¶ 1.o is a 2015 \$525 cable-related debt. Applicant has not made contact with the creditor, nor is it resolved. (Tr. 79-80; GE 2 at 5; GE 4 at 9)

SOR ¶¶ 1.p and 1.w total \$847, and they are car rental bills that Applicant's former car insurance company was supposed to pay. He disputed both of these debts with his insurance company. (Tr. 80-82; GE 2 at 5; GE 4 at 10)

SOR ¶ 1.q is an \$815 judgment filed against Applicant in July 2012. He believed this was originally a medical debt, and he has not made payments. (Tr. 82; GE 2 at 5; GE 4 at 3)

SOR ¶ 1.s is a \$2,767 debt related to Applicant's 2015 railroad certificate. He has not contacted the company, disputed it, nor paid it. (Tr. 83-84; GE 2 at 6; GE 4 at 5)

SOR ¶¶ 1.t and 1.u are medical debts totaling \$2,852, and they were placed for collection in 2014. He contacted the collector before August 2018, but has not made any payments toward either debt. (Tr. 84-88; GE 2 at 5; GE 4 at 9)

SOR ¶ 1.v is a 2016 \$485 propane debt that Applicant disputed because he has never held a propane account. (Tr. 88-89; GE 2 at 5; GE 4 at 10)

SOR ¶¶ 1.x and 1.aa are medical bills totaling \$542. They were incurred in 2013 and 2015 for his children when Applicant and his wife were in school. He has not made payments toward either debt. (Tr. 89-90; GE 4 at 10-11)

SOR ¶ 1.y is a \$369 parking fine from 2015. He has not paid this debt. (Tr. 90-91; GE 2 at 5; GE 4 at 10)

SOR ¶ 1.z is \$222 debt for an internet service. Applicant has a current account with this company; therefore, he believes the collection is inaccurate. (Tr. 91-92; GE 2 at 5)

Applicant follows a written budget. In May 2018, he paid \$500 to retain a credit-counseling service, but it is unclear which of the alleged debts were included in the plan, nor has he made any payments into the plan. Applicant and his wife owe an unspecified

amount to the Internal Revenue Service (IRS) for tax year 2017. He and his wife have not yet established a payment plan. (Tr. 22-24, 96-99; AE G)

Applicant received a Good Conduct Medal, multiple Army Achievement Medals, a Combat Infantryman's badge, an Iraq Campaign Medal, and other awards and decorations during his service in the U.S. Army. (Tr. at 30-32) He does not have a history of disciplinary issues while on active duty or at subsequent employers. (Tr. at 35) Applicant submitted four letters of recommendation reflecting his positive reputation, knowledge, hard work, professionalism, strong sense of duty, and high moral character. (AE H)

## **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 are to be used 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

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 the 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 EO 10865 provides that adverse 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The concern under Guideline F (Financial considerations) is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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.

Applicant experienced personal financial issues arising from voluntary and involuntary unemployment. He recently sought credit counseling to resolve his debts in a responsible manner, but he has not established a payment plan. He recently rehabilitated his student loan. However, Applicant has numerous unresolved debts. In 2016, he was confronted regarding most of the alleged debts. Since his interview, he has not established payment plans for any of his non-student loan debts; therefore, he only receives partial credit for AG ¶ 20(d). Additionally, Applicant owes money to the IRS for tax year 2017, and he has not established a payment plan or resolved the debt.

Although Applicant follows a budget, he did not establish that he is able to live within his means, nor has he shown that he have acted responsibly to resolve his outstanding delinquent debt in a timely manner. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) was not established.

### **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(d):

(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. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

I conclude Applicant did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f - 1.g:	For Applicant
Subparagraphs 1.h - 1.i:	Against Applicant
Subparagraphs 1.j - 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n - 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s - 1.u:	Against Applicant
Subparagraphs 1.v - 1.w:	For Applicant
Subparagraphs 1.x - 1.y:	Against Applicant
Subparagraph 1.z:	For Applicant
Subparagraph 1.aa:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge