



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



In the matter of: )  
)  
) ISCR Case No. 19-00287  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

07/25/2019

**Decision**

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 16, 2016. On February 27, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on March 26, 2019, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA), in lieu of a hearing. He included some documents with his Answer, and they are included in the record. On April 8, 2019, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on April 17, 2019. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 7 are admitted without objection. The case was assigned to me on June 14, 2018.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.d, and 1.e, and he denied SOR ¶¶ 1.b and 1.c, all with brief explanations. He included some documents with his answer. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He has a high school education. He has been married since 1999. He and his wife have two grown children and a 17-year-old. He briefly served in the Air Force in 1994, before being medically discharged.

Since at least 2006, Applicant has been employed as a designer and engineer, at or near shipyards along the coastal United States, in the defense industry or otherwise. Though he listed no periods of unemployment in his SCA, his background interview reflects that Applicant was unemployed between August and October 2009; from January to May 2012; from May to July 2013; and from November to December 2013. (Item 4 at 4-6) There is nothing to indicate that Applicant ever left a job due to his own misconduct or poor performance. Applicant has worked for his current employer, and sponsor for a clearance, since August 2016. There is no indication that he has ever held a clearance before. (Item 3)

The five SOR debts are established by credit reports in the record, from January 2017 and September 2018. (Items 6, 7) In January 2018, in response to an interrogatory from the DOD CAF about several debts (including the SOR debts), Applicant says one has been paid, one is to be paid, and that he is not responsible for the others, so he has requested that they be removed from his credit report. (Item 5)

SOR ¶ 1.a is an account that has been charged off in the amount of \$41,887. The debt is for a home equity account Applicant opened in 2006. He admits the account but disputes the amount owed. He said he fell behind on payments for about six months after he was laid off from a job. He said he told the creditor about his situation, and made partial payments for a time, but then "lost track of payments and my records." He did not believe that his payments were being properly applied. (Answer, Item 4) He disputed the account with credit bureaus. He provided documentation with his answer that the account has been deleted from his credit report. (Answer) He provided no documentation from the creditor showing any payments towards the debt, or that the creditor regards the account as resolved.

SOR ¶¶ 1.b (\$824) and 1.c (\$144) are past-due medical debts. Applicant denied the debts and provided proof that they have been paid. (Answer)

SOR ¶ 1.d (\$1,190) is a past-due debt to a phone company. Applicant admitted the debt and provided an excerpt from his credit report documenting that he disputed the account with credit bureaus and that it had been deleted from his credit report. (Answer) He provided no documentation from the creditor showing any payments towards the debt, or that the creditor regards the account as resolved.

SOR ¶ 1.e is a charged-off account related to a timeshare, for \$11,619. Applicant admits the debt. Applicant fell behind on the account after a job loss. (Answer; Item 4) He asserted that the timeshare had been sold by the creditor, and that he was not responsible for the debt. (Answer) He provided no corroborating documentation. He provided no documentation from the creditor showing any payments towards the debt, or that the creditor regards the account as resolved.

Applicant provided no documents concerning his current financial situation, such as his assets, or monthly income and expenses.

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The SOR debts are established by the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

The SOR debts incurred long ago when Applicant fell behind on payments after a job loss. They therefore occurred due to circumstances beyond his control. However, Applicant did not establish that he did much other than to dispute the debts with credit bureaus.

Some of the debts have been removed from credit reports after he disputed them, but the mere fact that a debt has been removed from a credit report is not enough to establish that the debt is resolved, or that any payments towards the debt have been made. ISCR 17-00729 at 3 (App. Bd. Apr. 3, 2019) Applicant did not meet his burden to establish that he acted responsibly to resolve them, or that he undertook good-faith efforts to do so. AG ¶¶ 20(b) and 20(d) do not apply, except as to the two small medical debts, which are resolved.

Applicant did not provide sufficient information to establish that his debts do not continue to cast doubt on his current reliability, trustworthiness and good judgment. Applicant also provided no documents concerning his current financial situation, such as his assets, income, or expenses, evidence which might show his ability to resolve his debts, or to avoid future financial trouble. AG ¶ 20(a) does not 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 the 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(a), 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.

Applicant has had past-due debts for several years. He did not make a reasonable effort to resolve them. He has failed to meet his burden of establishing that his financial issues are in the past, or that he is resolving them responsibly. The record evidence therefore leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline F, financial considerations.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, 1.e:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge