



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 19-00349  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

07/02/2019

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant had several medical bills go to collection since 2012, and he made no payments on an automobile loan charged off in May 2012. He took on new car loans for \$35,386 and \$40,707 in 2017 and \$9,978 in 2018 that are being repaid, but concerns persist about his financial judgment, given his lack of progress on resolving his delinquent debts. Clearance is denied.

**Statement of the Case**

On March 19, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 *National Security Adjudicative*

*Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.*

On March 21, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 29, 2019, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1-6). On April 1, 2019, DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on April 10, 2019, and he submitted a timely response to which the Government had no objections. On May 16, 2019, the case was assigned to me to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant. I received the case file on May 21, 2019, and accepted Applicant's FORM response in the record as Applicant Exhibit (AE) A.

### **Evidentiary Ruling**

Department Counsel submitted as Item 6 a summary report of a subject interview of Applicant conducted on August 6, 2018. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

**IMPORTANT NOTICE TO APPLICANT:** The attached summary of your Personal Subject Interview (PSI) (Item 6) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel, and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. He did not specifically object to the interview summary in his rebuttal (AE A) to the FORM. He did state that "things are not reporting correctly," although it is unclear whether he was objecting to the statement or to credit entries on his credit reports. In the absence of any specific objections or indication that the interview summary report contains inaccurate information, I accepted Item 6 in evidence, subject to issues of relevance and materiality in light of the entire record.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of December 19, 2018, Applicant owed medical collection debt totaling \$9,215 on 14 accounts (SOR ¶¶ 1.a-1.n); a telephone debt in collection for \$392 (SOR ¶ 1.o); and a charged-off debt for \$2,067 (SOR ¶ 1.p). (Item 1.) When he responded to the SOR allegations, Applicant denied only the telephone debt in SOR ¶ 1.o. He admitted the other debts, which he asserted were the result of illness when he was either not covered by medical insurance or when he had not met the yearly deductible under his medical insurance policy. (Item 2.)

After considering the FORM, which includes Applicant's Answer to the SOR (Item 2), and AE A, I make the following findings of fact.

Applicant is a 53-year-old high school graduate. He has been married to his second wife since March 1993, and has two children in their early 20s. Applicant completed some online coursework at a technical institute from June 2007 to December 2007, but earned no certificate. The institute has ceased operating. Applicant began working in the defense industry in January 2018. He had held a succession of jobs in the construction, utility, and telecommunications industries with some brief periods of unemployment from April 2016 to May 2016 after he resigned, and from March 2017 to July 2017 after he was involuntarily terminated from a job as a project manager for a construction company. (Items 3, 6.)

On February 9, 2018, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He listed vacations to the Caribbean in March 2014 and in August 2015 and a misdemeanor charge of disorderly conduct in August 2004. Regarding financial issues, Applicant disclosed a court judgment for \$2,700 awarded a former landlord in January 2015 that was resolved in January 2016. He

responded negatively to an inquiry concerning any delinquency involving routine accounts in the last seven years. (Item 3.)

A check of Applicant's credit on March 20, 2018, revealed a charged-off automobile loan for \$807 with a \$1,884 past-due balance (SOR ¶ 1.p); a disputed insurance debt of \$137 in collection since September 2015 (not alleged) and a \$293 utility debt (not alleged, assigned for collection in July 2016. Additionally, medical debts were in collection totaling \$7,748. The medical debts were placed for collection on various dates between June 2012 and December 2017. Applicant was disputing one of the medical debts, which had been placed for collection in September 2012 for \$980 (not alleged) and was reportedly still unpaid as of March 2018. A student loan charged off for \$3,151 was in collection with a \$4,899 balance (not alleged). Three student loan accounts were in collection for \$7,748 (not alleged). A student loan obtained in October 2016 for \$2,013 was charged off for \$335 in February 2018 (not alleged). (Item 5.)

On August 6, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When given the opportunity to divulge information regarding any delinquent debts, Applicant volunteered no information. He was then confronted with the adverse accounts on his credit record. He expressed his belief that the medical collection debts were all incurred from emergency appointments, and that some of the debts might be duplicate listings with different collection entities. He indicated that he would make payments on the debts now that he had stable employment. Regarding the delinquent student loans, Applicant advised that the debts were not behind more than 90 days. Concerning the car loan that was past due for \$1,884, Applicant indicated that he was unaware of the debt, but surmised that it might be a medical debt from his issues in February 2018 and March 2018. He described his financial situation as currently stable. (Item 6.)

As of December 2018, Applicant was legally liable on four car loans: a \$40,707 car loan obtained in August 2017 (balance \$37,422, \$865 monthly payments); an \$11,750 car loan obtained in December 2015 (balance \$3,876, \$394 monthly payments); a \$35,386 car loan obtained in February 2017 (balance \$28,503, \$607 monthly payments); and a \$9,978 car loan obtained in October 2018 (\$217 monthly payments). The car loans were being repaid on time for the most part. He had made no payments toward the charged-off May 2012 car loan (SOR ¶ 1.p). The loan was listed as \$2,067 past due, but with a balance of \$807, the amount charged off on the loan. Several medical debts totaling \$10,193 (SOR ¶¶ 1.a-1.n and a \$978 unalleged medical debt from May 2018) were reportedly in collection. Additionally, a \$392 telephone services debt (SOR ¶ 1.o), a \$1,420 debt (not alleged), and a \$137 insurance debt from July 2015 (not alleged) were reportedly also past due and in collection. (Item 4.)

On March 19, 2019, the DOD CAF issued an SOR to Applicant, alleging \$9,215 in medical collection debt, the \$392 telecommunications debt, and the May 2012 charged-off car loan as a debt of \$2,067. (Item 1.) In response to the SOR, Applicant admitted all of the debts but for the telephone debt, which he claimed was being reported erroneously because he was in good standing with the service provider. He expressed a mistaken belief

that the car loan was a medical debt. He explained that his medical debts were for treatment for a potentially life-threatening condition when he was employed as a contractor and not covered by medical insurance or had not met his yearly deductible. Concerning his failure to resolve the debts, Applicant stated:

I have taken responsibility for these items and have made payments on multiple past due bills. It is just taking time to catch them all up and certain entities would rather destroy or cause harm to people than work with them to resolve [the debts]. In some cases, a few of these bills went straight into collection with a two-week time frame of not receiving a payment or me asking for time due to no monies coming in.

Applicant added that he would not betray his country for some \$11,000 of debt and that denial of clearance eligibility would be a financial setback that would compromise his ability to repay his debt obligations. (Item 2.)

The Government posited in the FORM that Applicant had not acted responsibly to resolve his debts, citing his trips to the Caribbean and financing a car for approximately \$40,000 in 2017 while some debts went unpaid. In rebuttal to the FORM, Applicant indicated on April 15, 2019, that he has been “making a valiant effort” to resolve the issues on his credit report in that in less than two years, he has made payments totaling \$18,030 to his creditors. He contested the legitimacy only of the phone debt in SOR ¶ 1.o. He added that some “things are not being reported correctly” on his credit report; that creditors are slow to remove negative entries that have been resolved; and that some creditors are not willing to accept affordable repayment arrangements and would rather cause harm by filing for collection. (AE A.)

Applicant provided documentation showing that, in June 2009, he satisfied a \$625 judgment for delinquent state taxes. In February 2017, he paid a \$749 utility bill in collection. In May 2017, he paid a \$496 share-draft deficiency to a credit union. In November 2018, he apparently satisfied a charged-off credit card debt. He arranged in January 2017 to repay \$8,913 in student-loan collection debt at \$184 a month. He submitted his spouse’s credit report with handwritten entries noting calls to creditors and apparently reflecting settlement amounts for some accounts on her credit. She paid \$60 to resolve a wireless phone debt in her name in February 2017, and \$124 on a credit card account in May 2017. Applicant arranged to make a \$375 payment on April 19, 2019, toward a \$780 debt in collection. (AE A.) Some of the documents show debts as paid but not the amounts. However, his documentation does not establish that any of the debts that were satisfied, settled, or are being repaid are those alleged in the SOR.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to 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 overall 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 national security eligibility 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. 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concerns about financial considerations are articulated 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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's admissions and the available credit reports establish a record of delinquency that triggers two disqualifying conditions: AG ¶ 19(a), "an inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Of the \$11,674 in delinquent debt alleged in the SOR, Applicant disputes only the \$392 telecommunications debt. That debt appears on his December 2018 credit report, and the Appeal Board has held that credit reports are ordinary business records which are routinely accepted in DOHA proceedings, and Department Counsel is entitled to rely on the evidence in credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he] is not responsible for the debt or that matters in mitigation apply (internal citation omitted).

The burden is on Applicant to mitigate the negative implications for his financial judgment that arise from his record of medical collection debts; the charged-off automobile loan from May 2012; and the telephone services debt in collection. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. Five of the seven mitigating conditions warrant some consideration and could potentially apply in whole or in part. They are:

(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 person has received or is receiving 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.

The car loan in SOR ¶ 1.p was charged off in May 2012, and some of the medical collection debts were initially incurred several years ago, in 2013 (SOR ¶ 1.m) and 2014 (SOR ¶¶ 1.d-1.g, and 1.k-1.l). However, no progress has been shown toward resolving those debts. Even if the debts became delinquent several years ago, they are still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." See ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not mitigate such ongoing delinquency. The medical debts in SOR ¶¶ 1.a-1.c, 1.h-1.j, and 1.n are more recent in that they were all placed for collection in the last three years. They also remain unpaid.

AG ¶ 20(b) has some applicability in that most of Applicant's delinquent debts are medical. Non-discretionary medical debts do not carry the same financial judgment concerns as consumer credit abuse. Applicant indicated that the debts were incurred when he either lacked medical insurance or had not met his yearly deductibles when he had coverage, although he provided no corroborating documentation and little detail about his medical expenses or his income. Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep debts current. Applicant's evidence falls considerably short in that regard. During his August 2018 interview with an OPM investigator, Applicant did not deny the debts when he was confronted, but he knew little about them. He speculated that they all stemmed from



an emergency medical situation that occurred in February 2018 or March 2018. However, available credit information indicates that most of the medical debts in collection were incurred before 2018, and that the debt in SOR ¶ 1.p is a defaulted car loan and not a medical debt. Applicant exhibits questionable financial judgment by failing to keep himself apprised of his debt obligations. Moreover, after being placed on notice of the adverse credit information during his August 2018 subject interview, Applicant took on a fourth car loan in October 2018 while making little effort to address the issues of security concern to the DOD.

In rebuttal to the FORM, Applicant provided documentation showing some effort to satisfy or settle some debts, such as a tax judgment in 2009 and a utility debt in collection in February 2017. He arranged to make monthly payments toward a defaulted student loan. Yet, the payment records do not substantiate his claim that he paid \$18,060 in less than two years unless he is counting his considerable car loan payments. The Appeal Board held in ISCR Case No. 07-06482, decided on May 21, 2008, that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. During his August 2018 interview, Applicant expressed a willingness and an ability to pay his past-due debts. As of April 2019, Applicant has yet to resolve even the smallest of his medical debts (\$30) in collection. A promise to pay debts at some future date is not a substitute for a track record of timely payments. See ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). Without some documented progress toward resolving the debts in the SOR, neither AG ¶ 20(c) nor AG ¶ 20(d) apply. Even acknowledging that credit companies may be quick in turning delinquent debts over for collection and slow in removing adverse credit entries after the debts are resolved, it does not relieve Applicant of his obligation to address his legitimate debts.

Concerning AG ¶ 20(e) and Applicant's disputed liability for the telephone debt in SOR ¶ 1.o, there is no documentation in the record from which I can conclude that the debt is not valid. At a minimum, Applicant could have provided a letter from the provider indicating that his account is not overdue. He did not meet his burden of establishing AG ¶ 20(e). Without any information about his household income and with only limited information about his household expenses (his credit reports show that his car payments alone exceed \$2,000 a month), it is difficult to conclude that his financial problems are safely behind him.

### **Whole-Person Concept**

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant indicates that he would not betray his country because of delinquent debt that totals little more than \$11,000. The concerns under Guideline F are broader than whether he would deliberately compromise classified information, however. Between August 2017 and October 2018, he took on three car loans for \$40,070, \$35,386, and \$9,978. It is difficult to justify such extensive car debt when medical creditors go unpaid. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant's failure to give priority to resolving the financial issues of concern to the DOD raises considerable doubts about whether he can be counted on to comply with security requirements.

This decision should not be construed as a determination that Applicant cannot or will not attain the financial reform and rehabilitation necessary to be eligible for a security clearance in the future. After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant security clearance eligibility for Applicant at this time.

### **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.p:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant eligibility for a security clearance for Applicant.

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Elizabeth M. Matchinski  
Administrative Judge