



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 19-01665
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2019

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes \$29,925 on a charged-off unsecured loan and \$18,124 on a charged-off credit-card account. He has had no success in obtaining the funds needed to resolve the debts. His financial situation continues to raise security concerns. Clearance is denied.

**Statement of the Case**

On June 12, 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 June 27, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record in lieu of a hearing. On July 25, 2019, the Government submitted a File of Relevant Material (FORM), consisting of seven exhibits (Items 1-7). DOHA forwarded a copy of the FORM to Applicant on July 26, 2019, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on August 2, 2019. He submitted timely responses on August 15, 2019, and August 20, 2019, to which the Government had no objections. On September 11, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on September 17, 2019, and accepted into the record Applicant's responses to the FORM as Applicant exhibits (AEs) A and B.

### **Evidentiary Ruling**

Department Counsel submitted, as Item 5, a summary report of a personal subject interview (PSI) of Applicant conducted on December 10, 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 his or 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 footnote 1 of the FORM, Applicant was advised as follows:

**IMPORTANT NOTICE TO APPLICANT:** The attached summary of your Personal Subject Interview (PSI) (Item 3) [sic] 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. In his response to the FORM, Applicant did not object to the PSI or indicate that the summary report contained inaccurate information. I accepted Item 5 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 the June 12, 2019 SOR, Applicant owed charged-off debts of \$29,925 (SOR ¶ 1.a) and \$18,124 (SOR ¶ 1.b). When Applicant answered the SOR allegations, he admitted the debts, explaining that they had been included in a debt-repayment program but had not been resolved when he withdrew from the program in February 2017 after settling a smaller credit-card delinquency. He explained that he realized then that the program was "useless" in that it would take him years to accrue enough money to pay off the two large delinquencies. (Items 2-3.) After considering the FORM, which includes Applicant's Answer to the SOR, and Applicant's responses to the FORM (AEs A-B), I make the following findings of fact.

Applicant is a 55-year-old high school graduate. He has been married to his current spouse since January 2001. He was married to his first wife from May 1985 to May 1996. He has a son age 30 and a daughter age 32. He also has two stepdaughters ages 33 and 27. (Items 4-5.)

Applicant retired from the U.S. military at the rank of sergeant first class on October 1, 2010, after three years in the U.S. Reserve and 24 years of active duty. He was granted a secret clearance following a security clearance investigation completed in approximately April 1998. In November 2009, his security clearance eligibility was revoked for financial reasons. Applicant's clearance was reinstated in 2010 after he paid off some old bills from his divorce. (Items 2, 4.)

For the first year after his retirement, Applicant worked for a defense contractor as a human resource specialist in Afghanistan. Since November 2011, he has been employed by a defense contractor in the United States as a subject matter expert on the GI bill. (Items 2, 4.) Applicant's worksite from November 2011 to June 2015 was on a military base in another state. He stayed in a hotel during the work week and returned home on the weekends. Applicant has primarily teleworked out of his home since June 2015. (Item 4.)

In addition to his employment income, he receives disability pay from the Department of Veterans Affairs (VA) and his military pension. (Item 2.)

On January 17, 2018, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to update his security clearance eligibility. He responded affirmatively to financial record inquiries concerning whether he had an account or credit card suspended, charged off, or cancelled in the last seven years for failing to pay as agreed; whether he had defaulted on any loan in the last seven years; and whether he had any bills turned over to a collection agency in the last seven years. He reported that he owed a credit-card debt of \$18,000 in collection (SOR ¶ 1.b) that he attempted to resolve, but he could not afford the payment required by the collection entity. He also disclosed that he had defaulted on a loan of \$29,000 (SOR ¶ 1.a) that was in collection status, and explained:

Entered into debt relief Freedom Debt Relief (FDR), required to pay money into an account that does NOT pay the main creditor directly until you have enough money in an account to cover about 20%, thus the loan became delinquent. I withdrew to pay on my own. I attempted [on] several occasions to settle account but could not afford their unreasonable offer.

As for the current status of the loan debt, Applicant stated, "Still with collection, latest offer is a full amount of \$11,969.86 which I cannot afford." He indicated he had made no payments on the debt. (Item 4.)

Applicant's credit report of February 6, 2018, showed the delinquent credit-card account had been charged off for \$18,124 in February 2017. He owed \$29,925 on the defaulted loan, which had been charged off for \$27,463 in October 2016. Applicant had settled a credit-card collection debt of \$1,014 in November 2016. He was making timely payments on a credit card with a \$4,174 balance, and on four installment loans with balances totaling \$35,506. (Item 7.)

On December 10, 2018, Applicant was interviewed by an OPM investigator. He described his financial situation as "good" and stated that he was meeting all his financial obligations. About his two large delinquencies disclosed on his SF 86, he explained that he attempted to resolve the \$18,124 credit-card delinquency through the debt-repayment program, but that the creditor wanted too much to settle the debt. He had acquired the \$29,925 loan to consolidate his debts, but he then could not afford to settle the debt. While acknowledging that he had settled a smaller credit-card debt through the debt-repayment program, he stated that he should never have attempted to address his debts through the program because "the plan had no end in sight." He explained that he had accrued the credit balances for family vacations, and for his living and travel expenses while living apart from his family. (Item 5.)

Applicant's credit reports of February 2018 and May 2019 reveal a history since 2013 of reliance on loans, in some cases taking on higher debt in refinancing. (Items 6-7.) In April 2018, he paid off a \$27,088 loan by refinancing for a new loan of \$20,522, requiring

repayment at \$868 per month. As of May 2019, he was making his loan payments on time. He was also making payments of \$279 per month on a \$15,000 loan obtained in September 2015 (balance \$7,332 as of May 2019). In January 2019, he paid off a \$3,137 loan held since July 2018 through a refinancing for a new loan of \$7,008, requiring repayment at \$330 per month. That loan had a reported balance of \$7,280 as of May 2019, so it is unclear whether he had started repaying that newer loan. Applicant was making payments on two credit cards with balances of \$5,815 and \$1,568. He had no new delinquencies on his credit record, but he had not made any payments toward the charged-off debts in SOR ¶¶ 1.a and 1.b. (Item 6.)

On June 12, 2019, the DOD CAF issued an SOR to Applicant because of his charged-off debts totaling \$48,049. (Item 1.) On June 27, 2019, Applicant explained about the debt-repayment program that he did not realize that his payments into the program were held until he reached an amount that was enough to pay off a debt, and that payments were not being disbursed to each of the creditors on a monthly basis. While he managed to resolve one credit-card debt through the program, he withdrew from the program in February 2017 because it would take him years to accumulate enough money in his account to pay off the debts in SOR ¶¶ 1.a and 1.b. Applicant asserted that he lived within his means and was paying all of his current debts. (Item 2.)

On his receipt of the FORM on August 2, 2019, Applicant contacted the collection entities handling his defaulted accounts. He received settlement offers of \$10,473 for his loan debt (SOR ¶ 1.a) and \$9,968 for the credit-card debt (SOR ¶ 1.b). The payment to settle the loan was due on or before August 9, 2019. Applicant immediately requested a hardship withdrawal of \$23,000 from his 401(k), which would net him approximately \$21,352 after taxes and fees. On August 9, 2019, he was denied a hardship withdrawal because debt settlement was not a reason approved by the IRS for a hardship withdrawal. Applicant also attempted to obtain a loan from his bank, but it was disapproved. He asked friends and family members for some financial assistance to no avail. On August 15, 2019, he advised DOHA that he had “exhausted all possible avenues” regarding resolving the debts, but he would continue to remain in contact with the collection entities about the debts. (AE A.) On August 20, 2019, Applicant informed DOHA that the collection entity for the credit-card debt (SOR ¶ 1.b) was willing to accept 12 monthly payments to settle the debt, but the monthly payment of approximately \$830 “is quite a steep amount to pay monthly for [his] budget.” He reiterated that he would remain in contact with his creditors. (AE B.) Applicant presented no information about his employment income, his military retirement income, or his monthly living expenses, so it is unclear what he could pay toward his delinquencies.

## **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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. 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 relied on consumer credit to pay some expenses while living apart from his family for his job during the work weeks from November 2011 until June 2015. Despite telecommuting and so not having to pay lodging and travel costs, he stopped paying on the credit card in SOR ¶ 1.b, and an \$18,124 balance was charged off in July 2016. A loan obtained in March 2016 to pay off debts was charged off in October 2016 for \$27,463. He now owes \$29,925 on the defaulted loan. Disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c)," a history of not meeting financial obligations," are established.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by the delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

- (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; and

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

Regarding AG ¶ 20(a), the debts were not incurred in circumstances that can reasonably be characterized as unique. Applicant benefitted from the credit extended to him, and he has yet to make any payments toward the delinquencies. The debts are 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.” 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)).

Applicant has not provided information showing that the debts were caused by unexpected or unforeseen factors contemplated within AG ¶ 20(b). Even assuming that he had extra costs for his lodging, food, and trips home to see his family for several years, those costs were knowingly incurred and within his control. Moreover, 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. Applicant tried to resolve the debts through a debt-repayment program in 2016, and he managed to settle a smaller credit-card debt through the program in November 2016. Yet, there is no evidence of more recent attempts to settle or resolve his larger delinquencies before August 2, 2019, when he contacted the collection entities to arrange for settlements that he apparently cannot afford. AG ¶ 20(b) is not clearly established.

Some consideration of AG ¶¶ 20(c) and 20(d) is warranted because of the debt-repayment plan, but the lack of documented progress toward resolving the debts after he withdrew from the debt-repayment program undermines his case in mitigation. He presented no documentation of any efforts on his part to address his delinquencies between February 2017 and August 2, 2019, when he contacted his creditors after he received the FORM. His recent efforts to obtain settlement offers is viewed favorably, but he has yet to make any payments because he cannot meet the terms. He indicated on August 20, 2019, that the \$830 monthly payment required to settle the credit-card delinquency would be “a steep amount to pay monthly for [his] budget.” He was not successful in obtaining a hardship withdrawal from his 401(k) or borrowing from friends or family members.

The Appeal Board has long held that “a security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts.” See ISCR Case No. 09-02160 at 5 (App. Bd. June 21, 2010). 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. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). However, the Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” Applicant does not have a



significant history of late payments on his other debts. In that regard, he has demonstrated some financial responsibility. However, in evaluating his financial situation overall, I cannot ignore that he has taken on several loans over the years as his charged-off delinquencies totaling \$48,049 go unpaid. Available credit information shows that he paid off a \$27,088 loan in April 2018 by refinancing for a new loan of \$20,522 requiring repayment at \$868 per month. In January 2019, he refinanced a \$3,137 loan for a new loan of \$7,008. Applicant asserts that his current expenses are being paid on time, but he has also relied on unsecured loans to meet his finances. He provided no details about his income or expenses. Too many unanswered questions exist about his present financial situation, and he has made no progress toward resolving the debts in the SOR. For the reasons noted, the financial considerations security concerns are not sufficiently 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 her conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Applicant requested a decision on the written record, so it was incumbent on him to provide the evidence that might extenuate or mitigate the poor judgment raised by his \$48,049 in outstanding delinquent debt. Although Applicant now expresses a credible willingness to resolve his debts, 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). 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 or continue security clearance eligibility for Applicant.

### **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.b:	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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge