



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 18-01785  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

05/14/2020

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 3, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on an indeterminate date, and requested a hearing before an administrative judge. The case was assigned to other administrative judges on January 30, 2019; May 16, 2019; and October 1, 2019; and reassigned to me on March 5, 2020.

The hearing was convened as scheduled on March 12, 2020. Government Exhibits (GE) 1 and 3 through 7 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that I have marked Applicant's Exhibits (AE) A through C and admitted without objection.

## Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since May 2018. He served on active duty in the U.S. military from 1991 until he was honorably discharged in 1996. He is married with three adult children and an adult stepchild. ((Tr.) at 26-27, 38; GE 1)

Applicant earned a good salary while working overseas for a defense contractor from 2006 to 2008. He did not make as much upon his return to the United States. He and his family did not sufficiently adjust their lifestyle to their lesser income, and financial difficulties ensued. (Tr. at 18-19, 29-31)

Applicant was unable to maintain his mortgage loan payments. He filed a Chapter 13 bankruptcy case in June 2010. In December 2012, the case was closed without a discharge because Applicant failed to file a financial management course certificate and a certificate under 11 U.S.C. § 1328 concerning his domestic support obligations. (Tr. at 31-34; GE 3, 5)

Applicant needed additional assistance with his mortgage. He and his wife filed another Chapter 13 bankruptcy case in December 2015. He was able to obtain a mortgage loan modification, and he stopped paying the bankruptcy plan. The case was dismissed in February 2017 for failure to make plan payments. Applicant and his wife paid \$6,450 into the plan during the course of the bankruptcy. Of that amount, \$4,000 went to his attorney; \$367 went to the trustee; and \$2,082 was paid to his creditors. (Tr. at 33-34; GE 6)

The SOR alleges the two Chapter 13 bankruptcy cases; \$13,312 owed for the balance due on an auto loan after the vehicle was repossessed; a mortgage loan that was \$23,638 past due; and two delinquent telecommunications debts totaling \$1,574. The allegations are established through credit reports and Applicant's admissions.

Applicant paid the two telecommunications debts in April 2019, and he is current on his modified mortgage loan. He has been unable to work out payments for the auto loan. He called the creditor, who told him to contact the collection company. The collection company told him they did not have his account. The most recent credit report lists a balance of \$718, which is much less than the \$13,312 balance listed on a previous credit report. The larger figure may be the balance before the repossessed vehicle was sold, and the smaller figure may be the remaining balance. (Tr. at 20-25, 31, 39-40; GE 3, 4, 7; AE A-C)

Applicant realized that he had to make changes to his finances. He will still help his adult children if necessary, but not to the extent that he once did. He emphasized to them that they have to be responsible for themselves. He has been working overseas since July 2018. His wife has a good job. Their current finances are sound. He is able to pay his bills, contribute to his 401(k) retirement account, and not accrue any additional delinquent debts. The repossessed auto loan alleged in SOR ¶ 1.c is the only account with a balance on his March 2020 credit report. He has learned valuable lessons, and

he credibly testified that there will be no repeat of the conditions that led to his financial problems. (Tr. at 19-20, 25-28, 35, 38-42; GE 3, 4, 7)

## **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 security concern 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.

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.

Applicant has a history of financial problems, including two Chapter 13 bankruptcy cases, a repossessed car, a defaulted mortgage loan, and two delinquent telecommunications debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
  
- (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; and

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

Applicant earned a good salary while working overseas for a defense contractor, but he and his family did not sufficiently adjust their lifestyle to their lesser income when he returned to the United States. The Chapter 13 bankruptcy cases were primarily to protect their home. The first case was closed without a discharge because Applicant failed to file certificates. The second case was dismissed after he obtained a mortgage loan modification and stopped paying the bankruptcy plan.

Applicant paid the two telecommunications debt in April 2019, and he is current on his modified mortgage loan. He has been unable to work out payments for the auto loan, which has a balance of \$718. His finances are otherwise in order. He is able to pay his current bills, contribute to his 401(k) retirement account, and not accrue any additional delinquent debts.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant had a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. The above mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

### **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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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, Guideline F:	For Applicant
Subparagraphs 1.a-1.f:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge