



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-01145
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Donna Price, Esq.

**03/31/2020**

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant fully mitigated the financial security concerns created by three old credit card accounts that he and his wife erroneously believed had been fully resolved several years ago, after his wife lost her job in a corporate reorganization. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

**History of Case**

On October 13, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) in connection with the periodic reinvestigation of his security clearance. On April 26, 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 action was taken 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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), which came into effect June 8, 2017.

Applicant submitted his written Answer to the SOR on June 5, 2019. He admitted the SOR allegations, with explanations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on July 17, 2019. DOHA issued a Notice of Hearing on August 9, 2019, setting the hearing for September 12, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant and three witnesses testified, and his counsel offered Applicant Exhibits (AE) A through G into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on September 20, 2019.

### **Findings of Fact**

Applicant is 59 years old. He is a 1979 high school graduate. He enlisted in the U.S. Navy in August 1980, and honorably retired from active duty as a submarine qualified chief petty officer (E-7) in September 2000. After a period working in a naval shipyard, he began his current employment with a defense contractor as a team lead, performing major ship overhauls and repair projects, in March 2007. He has successfully held Secret and Top Secret clearances throughout this time. He and his wife married in 1985, and they have four children. (GE 1; AE B; AE D; Tr. 48, 83-84, 91-93.)

The facts that generated DoD CAF action in this case are simple and undisputed. After Applicant filed his latest e-QIP, the Office of Personnel Management (OPM) pulled a full data credit report on January 7, 2017. It showed three delinquent credit card accounts, all with the same major bank. Two of the accounts were in Applicant's wife's name, but showed that he was an authorized user on them. The third, with the smallest balance of \$5,276, was a joint account in both of their names. The total outstanding balance on the three accounts was \$33,958. The accounts had been open for between 10 and 20 years, but each became delinquent in 2013. Applicant's wife mostly used her two accounts for her work-related travel and other expenses, and their joint account was used for general family needs. (GE 3; GE 4.)

Throughout their marriage, Applicant's wife primarily handled their family finances on a day-to-day basis. This beneficial practice arose due to his frequent and lengthy work-related absences from home during and after his Navy career, and due to her resourcefulness and responsible management skills. During their time in the Navy, Applicant's wife started a home health management job, which allowed her to work from their home and to continue working as they frequently moved on military orders. She developed this into a 25-year career, in which she rose to become vice president of sales and operations for several different national organizations. By 2008, Applicant and his wife were each earning around \$115,000 to \$125,000 per year. Then, due to no fault of her own, Applicant's wife was laid off during an executive downsizing and corporate reorganization caused by the 2008 financial crisis and resulting recession. (Tr. 49-51.)

After her 2008 job loss, Applicant's wife was unsuccessful in finding new employment, so they reduced their expenditures to fit the almost 50% cut in family income. This effort was successful until 2013, when expenses related to their children's increasing education costs and other needs put an unmanageable strain on their budget. Recognizing this, Applicant's wife sought the assistance of a debt-resolution company. In 2014, this firm successfully negotiated a settlement agreement with the bank to resolve her three SOR-listed credit card accounts for a total of \$4,500. This sum was to be paid in three automatic debit installments between February and May of 2015. The first two of these payments were executed successfully, but for some reason that remains undetermined, the third payment was never received by the bank. Applicant's wife never received notice from the bank or the debt-resolution company that the settlement agreement was not successfully completed, and considered the matter to be resolved. (Tr. 50-53.)

Applicant was first made aware of this potential problem during his September 2018 personal subject interview with an OPM investigator. (GE 2.) He told his wife about the reportedly delinquent debts, and she explained that they had been resolved through her 2015 agreement with the bank. He supplied that information to the investigator, but he and his wife were unable to provide corroborating documentation. Applicant became aware that the matter remained unresolved when he received the SOR from the DoD CAF in late May 2019. Further inquiry revealed that the bank had only received the first two of the three scheduled automatic payments, but no one could explain what had happened to the third payment. Given his responsible management position supervising critical shipyard repairs, and the critical need to maintain his clearance to perform that work, Applicant explored every option to resolve this issue. In August 2019, Applicant's wife entered into direct settlement agreements with the bank to resolve all three of the outstanding SOR-listed accounts. When their pending efforts to refinance their home mortgage debt took too long, they used their "rainy-day" savings to make electronic payments that fully resolved all three accounts with the bank. (AE A; Tr. 66-67, 70-72, 88-89.)

Applicant and his wife live frugally and responsibly. They have owned their home for more than 20 years. In July 2019 they owed about \$181,500 toward their first and second mortgage loans, which have always been paid as agreed. Their home is worth about \$390,000 and, as a result of having recently discovered these credit card debts, they are close to finalizing a VA refinance and consolidation loan that will significantly reduce their current loan interest rates and monthly mortgage payments. As of the hearing date, they had not decided whether it would be prudent to withdraw any equity principal when they refinance, but might do so to replenish the "rainy-day fund" that they used to resolve the formerly delinquent credit card accounts, and possibly pay off other current credit accounts bearing higher interest rates. The two car loans on their credit report were opened in 2005 and 2007, and were fully paid off on time. They have no other delinquent accounts, and provided budget documentation showing a substantial monthly remainder after paying their living expenses and credit charges. There is no indication of any potential for future financial hardship. (AE A; Tr. 60-68, 71-74.)

Applicant provided copies of his military and civilian performance evaluations, commendations, awards, and qualifications, which document his sustained superior performance in increasingly demanding duties. He also provided testimony from two witnesses, and letters from five other associates, attesting to his excellent character, integrity, and trustworthiness. His testimony was forthright, and his concern for safeguarding national security interests was manifest. (AE B; AE C; AE D; AE E; AE F; AE G; Tr. 29-47.)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 any doubt concerning personnel being considered for national security eligibility 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 requires that 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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 relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant and his wife encountered financial difficulties when she lost her job, and about half of their combined family income, due to her former employer’s reorganization during the 2008 financial crisis. They managed to remain current on their bills, with frugal living, until 2013. At that point his wife, who capably manages their finances, contracted with a debt-resolution firm to settle three outstanding credit card accounts they could no longer afford to pay as agreed. Unbeknownst to them at the time, however, the final payment under the agreed settlement plan was never received by the bank. The accounts were discovered to remain delinquent by the DoD CAF when Applicant applied for the periodic reinvestigation of his clearance. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

AG ¶ 20 includes three conditions that fully mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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.

Applicant was unaware of the three delinquent credit card accounts until his OPM interview. This was not a result of irresponsibility, but rather from his well-placed trust in his wife's sound management of their family finances. Two of the three accounts were hers, on which he was solely an authorized user. They dated from her time as a well-paid vice president of a national home-healthcare organization, and she used them until she was laid off in a reorganization caused by the 2008 financial crisis. The third, and smallest, account was a joint account used for family living expenses. This was a one-time occurrence, caused by forces beyond their control, and to which they reacted responsibly. Some five years later, when they could no longer manage to carry these debts, Applicant's wife negotiated a favorable resolution which failed due to no fault of theirs. After becoming aware of this fact, they initiated and completed a new agreement with the bank to fully resolve the three accounts. Their current financial situation is fully solvent, and there is minimal risk of future financial stress. These actions establish complete mitigation of security concerns raised by Applicant's formerly delinquent debts.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has demonstrated accountability for resolving the debts he and his wife were formerly unable to repay. They have now resolved the formerly delinquent debts. He demonstrated strong character and has devoted most of his adult life to successful support of critical national security objectives. Applicant provided persuasive evidence of sufficient income security to ensure solvency in the future. The potential for pressure, exploitation, or duress is minimal. Overall, the evidence has eliminated any former doubt as to Applicant's eligibility and suitability for a security clearance. He successfully met his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge