



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



In the matter of: )  
)  
) ISCR Case No. 19-01534  
)  
Applicant for Security Clearance )

**Appearances**

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

01/27/2020

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 14, 2019, 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 July 15, 2019, and requested a hearing before an administrative judge. The case was assigned to me on September 10, 2019.

The hearing was convened as scheduled on October 29, 2019. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE G through M and admitted without objection.

## Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since 2011, but he moved to a different location in 2015. He seeks to retain a security clearance, which he has held since about 2011. He has a bachelor's degree that was awarded in 2011 and additional credits but no post-graduate degree. He is single without children. (Transcript (Tr.) at 40-41, 43; GE 1, 2)

Applicant asserted that his move to a different location for his job in 2015 was more costly than he anticipated. His rent increased by \$400 per month. His car was wrecked in an accident in 2015, and he had to buy a new car. With the added expenses, he was unable to pay all his bills. A number of accounts became delinquent, and his student loans went into default. (Tr. at 17, 28-31; GE 2-4)

The SOR alleges four defaulted student loans totaling \$91,624, with two of the loans reduced to judgments, and four miscellaneous delinquent debts with balances totaling about \$28,000. Applicant admitted owing all the debts, but he stated that he was making arrangements to pay them.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2018. He reported his four defaulted student loans as well as the debts alleged in SOR ¶¶ 1.f and 1.h, which he listed as being \$1,345 and \$2,132. Those figures reflected the past-due amounts, not the balances. He indicated that he planned to take out a loan from his 401(k) retirement plan to pay the majority of his student loans. He stated that he was working overtime and putting money aside, which he planned to use to pay the two delinquent debts the following month. (GE 1)

Applicant was interviewed for his background investigation in June 2018. He discussed his financial problems. He stated that he planned to pay his delinquent debts and defaulted student loans. He indicated that he was considering using his 401(k) funds to pay his debts. (GE 2)

The DOD obtained Applicant's credit report in April 2019. The report listed all of the debts alleged in the SOR. The report listed the account for the past-due debt alleged in SOR ¶ 1.g was opened in June 2018, and the last payment was made in October 2018. The most recent payment on the other delinquent debts and defaulted loans was made in May 2018. The credit report also listed that Applicant was \$1,167 past due on his auto loan, and that he was past due a total of \$174 on three other small debts. He had to travel internationally after a family member passed away in a foreign country. He testified that he is still two months behind on the auto loan, but he is attempting to get caught up.<sup>1</sup> (Tr. at 38-39; GE 4)

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<sup>1</sup> The auto loan and the three small past-due debts were not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

The same lender owns the four defaulted student loans. The lender obtained judgments against Applicant for at least two of the loans. His wages were garnished \$8,447 in 2019 to satisfy the judgment for the \$8,076 defaulted loan alleged in SOR ¶ 1.e. He has not documented any payments toward the three other defaulted student loans. The lender may attempt to enforce the other judgment or judgments by garnishment. Applicant testified that he owed \$975 on the loan against his 401(k), and after that loan is paid, he will take out another loan to pay his two smaller student loans (\$26,802 and \$15,464). His pay statement for the one-week pay period ending December 20, 2019, indicated that \$51 was deducted for his 401(k) loan, and that \$2,686 had been deducted year-to-date. (Tr. at 17-22, 31-34, 39; Applicant's response to SOR; GE 2-4; AE A, G, K-M)

The bank that is owed the \$7,295 debt alleged in SOR ¶ 1.f sued Applicant for payment. In July 2019, the bank and Applicant entered into a stipulation for payment in full. Applicant agreed to pay at least \$200 a month until \$7,295 plus \$364 court costs is paid in full. He provided documentation that he made the four required \$200 payments since August 2019. (Tr. at 21-25, 34-35; Applicant's response to SOR; GE 3, 4; AE B, G, J)

Applicant entered into a payment agreement with the collection company for the debt alleged in SOR ¶ 1.g. He agreed to pay \$53 until the \$637 balance (alleged as \$544 in SOR) is paid in full. He provided documentation that he made the four required \$53 payments since September 2019, which reduced the balance to \$424. (Applicant's response to SOR; GE 3, 4; AE D-G, I)

Applicant and the collection company for the \$11,673 debt alleged in SOR ¶ 1.h entered into a \$98 per month payment agreement, with the first payment made on May 17, 2019. The payments are electronically withdrawn from his bank account. He has made all seven required payments. The balance in December 2019 was \$11,317. (Tr. at 26-27, 35; Applicant's response to SOR; GE 3, 4; AE C, G, H)

Applicant has not made any payment arrangements for the \$8,815 debt alleged in SOR ¶ 1.d. He stated that he intends to pay his debts. He will continue with the payment plans in place, pay off two student loans with the proceeds from a loan against his 401(k), and arrange payment plans for the fourth student loan and remaining delinquent debt. He has conducted independent research on finances, but he has not received formal financial counseling. (T. at 35-36, 41-45; Applicant's response to SOR; GE 3, 4)

### **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 delinquent debts and defaulted student loans. 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;
- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to a move to a different location for his job in 2015 and a car accident the same year. More recently, he had to travel

internationally after a family member passed away in a foreign country. The car accident and the death of a family member constitute conditions that were beyond his control.

Applicant has worked consistently, albeit at two locations, since 2011. He commented on his financial problems in his April 2018 SF 86 and during his background interview in June 2018. He stated that he planned to pay his delinquent debts and defaulted student loans. He indicated that he was considering using his 401(k) funds to pay his debts. His finances had actually deteriorated by the time the DOD obtained his credit report in April 2019. The account for the SOR ¶ 1.g debt was opened in June 2018, the same month as the interview, and the last payment was made in October 2018. As of the April 2019 credit report, he had not made any payments toward his other debts, and his auto loan and other small debts were past due.

Applicant did not take any real action until after the SOR was issued. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). The only debt that is completely resolved is the \$8,076 defaulted loan alleged in SOR ¶ 1.e, which was paid by garnishment. That debt is mitigated. However, court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor himself. *Id.* at 4. Finally, he stated that he intends to address his defaulted student loans and delinquent debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Ultimately in this case, no matter how much I want to believe Applicant, he does not have a sufficient track record to enable me to trust that he will pay his debts. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant may reach a point where his finances are sufficiently in order to warrant a security clearance, but he has not established that he is there at this time. I find that financial considerations security concerns remain despite the presence of some mitigation.

### **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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge