



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



In the matter of: )  
)  
) ISCR Case No. 19-01767  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2020

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. A Statement of Reasons (SOR) was issued under Guideline F, financial considerations, due to a large student loan in collection and other delinquent debts, and dismissal of a Chapter 13 bankruptcy for default in payments. The SOR was amended to include Guideline E, personal conduct, because of aggravated sexual assault and indecency with a child charged in May 2005. He failed to provide sufficient evidence addressing his financial difficulties and delinquent obligations. Financial considerations security concerns are not mitigated. In 2007, the state dismissed the criminal charges against Applicant. The personal conduct security concern was not established. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 17, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. On October 21,

2019, an amended SOR was issued detailing the security concerns under Guideline E, personal conduct.

The DoD CAF acted under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On August 26, 2019, Applicant answered the Guideline F allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (SOR Response) On October 30, 2019, he answered the amended SOR. On December 11, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on January 16, 2020.

Seven Government exhibits (Ex. 1 – 7) and three Applicant exhibits (Ex. A – C) were admitted into evidence without objection. The record was held open following the hearing to allow Applicant to submit additional documentation. On February 7, 2020, three additional documents were received and admitted into evidence without objection as Ex. D – F. On March 11, 2020, an additional document was received and admitted into evidence without objection as Ex. G. Applicant testified, as reflected in a transcript (Tr.) received on January 29, 2020.

### **Findings of Fact**

Applicant is a 51-year-old quality inspector who has worked for a defense contractor since June 2018 and seeks to obtain a security clearance. His current annual salary is approximately \$110,000. (Tr. 47) He married in 2007 and was divorced in May 2019. (SOR Response) He has two children ages 25 and 20 and two stepchildren ages 23 and 25. (Tr. 16) He has no child support obligation. (Tr. 34) He is currently living with his parents to save on expenses. (Tr. 25)

The SOR alleges a \$72,574 student loan collection account (SOR 1.b); a \$3,509 telephone service collection account (SOR 1.c); a \$1,092 credit card collection debt (SOR 1.d); an \$833 bank credit card collection account (SOR 1.e); and a \$155 bank card account (SOR 1.f) in collection. The four debts, other than the student loan obligation, total approximately \$5,500. He has not made any payments on these four debts. (Tr. 28) At the time of his September 2018 enhanced subject interview, he had no information about these debts and speculated that they might have been joint credit cards he shared with his wife. At the time of his subject interview he was arguing with his wife as to who was responsible for a telephone collection debt (SOR 1.c, \$3,509). (Ex. 2, Tr. 107) The debt became so large because his then wife had used the account to purchase a number of new cell phones. (Tr. 108) He admitted all of the debts in the SOR except for a \$155 collection debt (SOR 1.f). That account was removed from his credit record by the credit reporting agencies after he challenged the debt. (Ex. G, Tr. 26)

In July 2014, Applicant and his then wife filed for Chapter 13, Wage Earner's Plan, (SOR 1.a) bankruptcy protection. (Ex. 5) The action was taken in an attempt to save his home from foreclosure and to address delinquent obligations due to periods of unemployment and an employment strike that he had experienced. (Tr. 107). He had been laid off three times and then in 2012, the company experienced a 10-week strike. (Tr. 29) The bankruptcy listed \$200,000 in assets and \$345,000 in liabilities. (Ex. 5, page 42) His home represented \$168,500 of the assets and \$129,000 of the liabilities. (Ex 5, page 18 and 21) Liabilities included \$131,072 in student loans, which included his wife's student loans. (Ex. 5, page 43) At the time of filing, Applicant and his wife's combined annual income was \$108,000. (Ex. 5, page 63)

Applicant's Chapter 13 plan required \$350 payments for the first six months and then \$1,075 monthly for 54 months. The plan, if completed, would repay the creditors \$60,150. (Ex. 5, page 72). (Tr. 32) In October 2017, the bankruptcy was dismissed. (Ex. 5, page 76) Applicant asserted he had been current on his monthly Chapter 13 payments until he moved to Australia after separating from his wife. (Tr. 30) He lived in Australia from June 2017 through March 2018. (Tr. 24) Following the dismissal of the bankruptcy, he made no payments on the obligations listed in the bankruptcy. (Tr. 59) He was required to obtain financial counseling as part of the bankruptcy proceedings. (Tr. 105) No information was provided as to what he learned in the counseling or the nature of the counseling.

As reflected in Applicant's June 2018 Electronic Questionnaires for Investigations Processing (e-QIP), he claimed that \$276 weekly was being withheld from his paycheck due to a court-ordered Chapter 13 bankruptcy garnishment. (Ex 1) It was not explained why there was a Chapter 13 garnishment when the bankruptcy had been dismissed in October 2017. (Ex. 5, page 3 and 76)

Applicant asserted there is \$70,000 equity in his home, which was purchased in July 2005. (Tr. 24, 53) During the marital separation, while Applicant was in Australia, his wife made a very few monthly payments on the home. (Tr. 24) The home went into foreclosure, but was brought out of foreclosure before it was sold. (Tr. 52) During the bankruptcy proceeding, the real property could not be divided in the divorce. (Tr. 45) He purchased his wife's equity in the home. (Tr. 77) Following his divorce, the home was not in a saleable condition. (Tr. 68) Applicant has been renovating the family home and intends to turn it into a rental property. (Tr. 23) Documents presented show Applicant has spent \$21,900 repairing the home. (Ex. D, Ex. E, Ex. G) He spends most of his disposable income on the renovation, which is nearly complete. (Tr. 28) In May 2019, he resumed making payments on the mortgage. (Tr. 52) Applicant is current on his \$1,653 monthly mortgage payments on the property he is renovating. (Ex. B, Ex. C, Tr. 21)

Applicant obtained student loans from 1992 through 1994. (Tr. 20) Prior to the bankruptcy filing, Applicant asserts he made payments on his student loans, but stated there were also periods of deferments, forbearances, and non-payment. (Tr. 54) As of January 10, 2020, he was paying \$185.80 every two weeks per court-ordered garnishment to address his \$72,000 student loan obligation. ((Ex. A, Tr. 19, Tr. 27, and

Tr. 55) The garnishment went into effect in late 2019, and his pay statement shows that only two payments totaling \$369.93 had been made as of the hearing. (Ex. A, Ex. 56)

In October 2005, Applicant was charged with Aggravated Sexual Assault on a child, a first degree felony. (Ex. 3, page 19, Ex. 4) It had been alleged he had touched his girlfriend's daughter's private areas while bathing the child, then 10 years old. (Tr. 89) He and the girl's mother were living together at the time. Applicant denies any inappropriate conduct and asserts the girl was old enough to bathe herself. (Tr. 92) After a few months in therapy, the girl admitted to her therapist that she not been molested. (Ex. 97) This information was brought to the attention of the prosecution. In March 2007, the action against Applicant was dismissed by the state, citing "Other, Specify: In the interest of justice." (Ex. 3, page 40)

At the hearing, it was suggested Applicant might want to send documentation as to the current status and any payments made on his delinquent obligations. (Tr. 109) Information was received challenging the \$155 bank card disputing on this credit report. (Ex. G). No documentation related to the other delinquent accounts was received following the hearing.

### **Policies**

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 must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . 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.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts,” “(b) unwillingness to satisfy debts regardless of the ability to do so,” and “(c) a history of not meeting financial obligations.” 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 or] she is not responsible for the debt or that matters in mitigation apply.

Applicant admitted the delinquent obligations in the SOR except for a \$155 account. The record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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 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;

(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 Appeal Board has held 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. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board stated in ISCR Case No. 17-00263 (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 has established that two court-ordered payments totaling less than \$400 have been taken from his pay to address his student loan obligation in SOR ¶ 1.b.

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not established. Applicant's delinquent debts are numerous, recent, and remain unpaid. He did not submit evidence of any conditions beyond his control that contributed to his financial delinquencies. His divorce

was a condition beyond his control, but there is no evidence that it contributed to the debts alleged in the SOR. His divorce did not cause his student loan delinquency. He asserted he received financial counseling as part of his bankruptcy proceeding, but failed to submit evidence of counseling or what he had learned from that counseling. Neither AG ¶ 20(c) nor AG ¶ 20(d) can reasonably apply without some progress toward resolving his old delinquencies. He has disputed the legitimacy of a single \$155 delinquent account, which, if it was the sole debt in question, would not be of security significance. He asserts he is making payments on his delinquent student loan, but the only corroborating evidence showed that less than \$400 in court-ordered payments has been made. The more payments an applicant has made, the more likely he will continue the repayment agreement to completion. One or two payments by garnishment shows a start has been made to address the debt, but is not as persuasive as having made six months or more of voluntary payments.

An applicant is not required to establish that he has paid each of the delinquent debts 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. This he has not done. Too many unanswered questions exist about his present financial situation. The financial considerations security concerns are not sufficiently mitigated. However, I do not find against Applicant as to the filing of bankruptcy because financial circumstances over which he had no control (unemployment and multiple layoffs) resulted in him seeking bankruptcy protection.

### **Guideline E, Personal Conduct**

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

Department Counsel seeks to establish that Applicant was involved in conduct involving questionable judgment, dishonesty, or unwillingness to comply with rules and regulations due to him being charged in October 2005, with aggravated sexual assault on a child, a first degree felony. It had been alleged he had touched his girlfriend's daughter's private areas while bathing her. Applicant denies any inappropriate conduct. After a few month of therapy, the girl confessed that she had not been molested. This information was brought to the attention of the prosecution. In March 2007, the action against Applicant was dismissed by the state, citing "Other, Specify: In the interest of justice."

I conclude the state was in the best position to determine what had actually happened in 2005, and the state dismissed the charges in the interest of justice. AG ¶ 17 (f) "the information was unsubstantiated or from a source of questionable reliability,"

applies. The burden of proof to establish a disqualifying condition under this guideline was not met.

### **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 the 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 common sense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The comments under Guideline F and Guideline E are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. However, Applicant failed to supplement the record with relevant and material facts regarding his financial circumstances and his judgment and reliability. In short, the file lacks sufficient evidence to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantiating documents and details to explain his finances.

Applicant was first made aware of the Government's concern about his delinquent obligations during his September 2018 subject interview. In July 2019, he was made aware of the specific debts in question when he received the SOR. Since that time, he has provided documentation that he has paid less than \$400 on his delinquent obligations.

Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. The decision to deny a clearance at this time should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance in the future. The awarding of a security clearance is not a once-in-a-lifetime occurrence, but is



based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, he may well demonstrate persuasive evidence of his security worthiness. Favorable consideration would be given to additional months of compliance with payment on his student loan. However, a clearance at this time is not warranted.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid, it is whether Applicant's financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me with questions and doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. Where the state chose to dismiss the sexual misconduct charges in the interest of justice, the personal conduct security concerns were not established.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraphs 1.b – 1.f: Against Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraph 1.a: For 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 Applicant a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge