



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



In the matter of: )  
)  
) ISCR Case No. 19-02050  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

04/22/2020

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to demonstrate financial responsibility. He resolved eight of the ten delinquent accounts alleged in the Statement of Reasons (SOR). He is currently unemployed but has acquired no additional delinquent accounts. Given the opportunity, he would continue resolving the two remaining delinquent accounts. He mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 24, 2018. He was interviewed by a government investigator on October 4, 2018. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued an SOR on August 9, 2019, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on September 4, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on February 10, 2020. DOHA issued a notice of hearing on February 27, 2020, setting the hearing for March 6, 2020. I convened the hearing as scheduled. Applicant affirmatively waived his right to 15-day advance notice of the date of his hearing. (Tr. 12-14) At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified and submitted nine exhibits (AE 1 through 9). AE 7 through 9 were received post-hearing. All exhibits were admitted without objection. Hearing exhibit (HE) 1 is the Government's discovery letter that I marked and made part of the record. DOHA received the hearing transcript (Tr.) on March 16, 2020. HE 2 is a Joint Personnel Adjudication System (JPAS - Joint Adjudication Management System (JAMS)) document Department Counsel produced at my request on April 14, 2020, showing that Applicant is being sponsored by a federal contractor. Thus, DOHA has jurisdiction to adjudicate the case.

### **Findings of Fact**

In his SOR answer, Applicant admitted the financial allegations in ¶¶ 1.a through 1.i, with comments. He did not address the allegation under ¶ 1.j, so I considered it denied. His SOR admissions and those at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 28 years old. He graduated from high school in 2010. He has never been married, but adopted a child, age 10.

Applicant worked as a security guard for different employers between 2010 and November 2017. He was unemployed between November 2017 and June 2018. A federal contractor hired him in June 2018. He was granted an interim security clearance in April 2019. He worked for this employer until his interim clearance was withdrawn as a result of the concerns alleged in the SOR, and he was then laid off in December 2019. He testified that he has a new prospective employer, a federal contractor who promised him a position if he is granted clearance eligibility. HE 2 shows that Applicant is being sponsored by a federal contractor.

In response to Section 26 (Financial Record) of his 2018 SCA, Applicant disclosed a defaulted car loan he cosigned for his 50-year-old aunt. The background investigation addressed his financial problems and the 10 delinquent accounts alleged in the SOR. The status of those accounts is as follows:

SOR ¶ 1.a (\$18,258) alleges a defaulted car loan Applicant cosigned for his 50-year-old aunt in 2015. She failed to make the payments, the car was repossessed, and it was sold at auction. His aunt intends to file bankruptcy to resolve her debts. Applicant is trying to determine whether his aunt's eventual bankruptcy discharge would also release him of financial responsibility. Applicant explained that he was unable to make the loan payments because at the time his aunt defaulted on the loan, he was involved in a serious car accident and was not working. He did not have the financial means to pay this debt. This account is unresolved. (Tr. 30-34)

SOR ¶ 1.b (\$1,603) alleged a medical account in collection. Applicant paid the account in August 2019. (AE 5)

SOR ¶ 1.c (\$863) alleged an Internet services provider account in collection. Applicant established the account in 2018 for a close friend, and she failed to make the payments. He stated that she told him she was going to pay the debt but has failed to do so. The account is unresolved.

SOR ¶ 1.d (\$827) alleged an overdraft bank account in collection from August 2018. Applicant paid the account in August 2019. (AE 4)

SOR ¶ 1.e (\$46) alleged a medical account in collection. Applicant paid the account in January 2019. (AE 3)

SOR ¶ 1.f (\$148) alleged a medical account in collection. Applicant paid the account in January 2019. (AE 3)

SOR ¶ 1.g (\$461) alleged a medical account in collection. Applicant paid the account in August 2019. (AE 1)

SOR ¶ 1.h (\$780) alleged a medical account in collection. Applicant paid the account in September 2019. (AE 6)

SOR ¶ 1.i (\$45) alleged a medical account in collection. Applicant paid the account in September 2019. (AE 6)

SOR ¶ 1.j (\$21,125) alleged a hospital-services account in collection. The account concerns medical bills Applicant incurred after a serious auto accident. He believed the account was paid with the proceeds of a lawsuit he brought against the other driver's insurance company. Applicant's attorney indicated that the other driver's insurance (\$30,000) was inadequate to cover all the hospital expenses (\$65,000). (AE 7)

Applicant explained that his financial problems resulted from several factors. In March 2016, he was involved in a severe car accident. Most of the medical debts alleged in the SOR resulted from his car accident because at the time he did not have medical insurance. The other accounts became delinquent because of his inability to work while convalescing. Additionally, he was laid off from his job and unemployed from November 2017 to June of 2018. Because of his lack of earnings, he did not have the financial means to address his delinquent accounts.

Applicant testified that he is trying to do the right thing - to stay on the right path. He is new to the security clearance process and did not know that the background investigation would scrutinize his financial situation. He believes that the clearance process is helping him to become a better person, to become financially responsible, and able to honor his financial obligations.

Applicant resolved several of the SOR debts while he was working and able to do so, before he was laid off after his interim clearance was revoked in December 2019. He currently does not have a job or the financial means to address his debts. He intends to call his creditors and to try to make payment arrangement with his mother's financial help. He noted that his mother has been helping him to pay some of his debts. He intends to determine whether she can help him to set up additional payment arrangements.

Applicant believes that he has learned a hard lesson as a result of his financial problems. He promised not to cosign any additional loans or to open accounts for anyone else in the future. He plans to address his remaining delinquent debts as soon as he finds employment.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AGs list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in Security Executive Agent Directive (SEAD) 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered. [First time SEAD used]

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The

applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 . . . .

Applicant’s financial problems and the 10 SOR delinquent debts and collection accounts are documented in the record. AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” and “(c) a history of not meeting financial obligations.” The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 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;

(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.

All of the above financial considerations mitigating conditions are partially or fully raised by the facts in this case and mitigate the security concerns. Applicant developed financial problems, in part, because he was involved in a serious car accident in 2016. Most of the medical accounts alleged in the SOR resulted from his car accident. He was unable to work for a period after his accident, and was unemployed from November 2017 to June 2018. Additionally, he was laid off because of the SOR concerns in December 2019. Thus, Applicant's financial problems are attributed, to some extent, to circumstances beyond his control.

It also appears that Applicant's 50-year-old aunt took advantage of him by asking him to cosign a car loan for her, and that he was naïve when he opened an Internet account for a close friend who then failed to honor her promises to pay the charges. He credibly explained that he will not cosign loans or accounts for others in the future.

Applicant's documentary evidence shows that he paid off eight of the ten alleged delinquent accounts. Only the accounts alleged in SOR ¶¶ 1.a. and 1.j. are unresolved, and he credibly indicated his intent to address those two remaining accounts when he is financially able to do so. Applicant has demonstrated financial responsibility by paying off eight of the SOR accounts, and he has acquired no additional delinquencies.

Although Applicant could have demonstrated better judgment by not cosigning a car loan for his aunt and not opening an account for a friend, I find that he has been financially responsible under his circumstances. Applicant's evidence is sufficient to demonstrate his current financial responsibility, and that his financial problems are being resolved commensurate with his financial ability. I believe that given the opportunity, Applicant will establish payment arrangements to resolve the two remaining delinquent accounts. The financial considerations security concerns are mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person

concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 28, was hired by a federal contractor in June 2018. He was granted an interim security clearance in April 2019. He worked for this employer until his clearance was withdrawn as a result of the SOR concerns in August 2019, and he was then laid off in December 2019. Applicant has a new prospective employer (a federal contractor) who promised him a position if he is granted clearance eligibility.

Applicant paid off eight of the ten SOR delinquent accounts. His evidence is sufficient to establish that circumstances beyond his control contributed to or aggravated his financial problems. After that, he has been financially responsible commensurate with his limited financial resources. Given the opportunity, Applicant will continue to resolve the two remaining delinquent accounts alleged in the SOR.

### **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.j	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for a security clearance. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge