



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



In the matter of: )  
)  
) ISCR Case No. 19-02107  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

02/20/2020

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations, but failed to mitigate the Guideline E, personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 4, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on September 24, 2019, and requested a hearing before an administrative judge. The case was assigned to me on November 20, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 25, 2019. I convened the hearing as scheduled on January 14, 2020. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibit (AE) A. All exhibits were admitted into evidence without objection. The record was held open until January 28, 2020, to permit Applicant to submit additional exhibits. He timely submitted Applicant Exhibits (AE) B through E. There were no objections to any exhibits offered, and all were admitted into evidence. (Hearing Exhibit I) DOHA received the hearing transcript on January 23, 2020.

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.a and 1.b. He admitted the allegations in SOR ¶¶ 1.c and 2.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 27 years old. He earned a bachelor's degree in 2014. He is not married and has no children. After college he was employed until August 2018, when he was laid off. He was unemployed until December 2018. He received unemployment benefits. He began working for his current employer, a federal contractor, in January 2019. (Tr. 15-19)

Applicant attributed his financial problems to his voluntary participation in a real estate seminar conducted by a former reality television star and real estate investor, Person A. His participation began in 2017. He attended the seminar conducted by Person A, for which he paid \$15,000 to learn how to buy and sell houses, make real estate investments, and within 90 days make a profit. Applicant used credit cards to finance his attendance at the seminar. He believed that he would earn enough money from his real estate investments to pay the credit cards. Person A has been sued several times by former students, who alleged they received worthless advice through the seminars; they were victims of predatory and fraudulent business practices; and the seminars are designed to deceive and coerce customers into purchasing additional products. The lawsuits have been dismissed for various jurisdictional issues. It is unknown if there is a current, pending lawsuit. Applicant believes the real estate seminar was a scam. (Tr. 19-23)

Applicant completed a security clearance application (SCA) in January 2019. In response to Section 26 that inquired whether Applicant had any bills or debts, including credit cards that were turned over to a collection agency, charged off or canceled for failing to pay, he responded "no." (GE 1)

Applicant was interviewed in February 2019 by a government investigator. During the interview, he was asked by the investigator to describe his overall financial situation. Applicant responded it was good, and he was meeting all of his obligations on time. He was then confronted with the delinquent debts detailed in his credit report and that are alleged in SOR ¶¶ 1.a through 1.c. He told the investigator he did not disclose the debts because he was not sure he needed to list them because he was scammed into investing

in a real estate deal and used his credit cards to finance his investment. He had not taken any action to resolve the delinquent credit cards before he was interviewed, but told the investigator he would inquire about a payment plan to resolve them. The debts alleged in SOR ¶¶ 1.a, 1.b and 1.c are corroborated by a January 2019 credit bureau report. The debts became delinquent in 2018. (GE 2, 3)

Applicant testified that he did not disclose his delinquent debts on his SCA or when he was asked to describe his finances by the government investigator because he was embarrassed that he had been scammed. He stated that his embarrassment is not an excuse for his conduct. (Tr. 31-35)

After Applicant's February 2019 background interview, he made payment arrangements to resolve his delinquent debts. He has a payment plan to pay \$150 a month for the debt in SOR ¶ 1.a (\$10,400). He provided documentary proof to verify his payments and that he has reduced the balance owed to \$8,875 as of December 2019. In March 2019, he paid a lump sum settlement payment (\$3,900) to resolve the debt in SOR ¶ 1.b (\$7,212). He negotiated a settlement for the credit card debt in SOR ¶ 1.c (\$5,255), in the amount of \$2,364 with monthly payments of \$65 to conclude in December 2022. He has made the first payment on that debt. (Tr. 23-31; AE B, C, D)

### **Policies**

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has three credit card debts that have been delinquent since approximately 2018. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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; 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 using credit cards to finance his participation in a real estate seminar. He later believed the seminar was a scam. After his background investigation, he made arrangements to pay his delinquent credit cards. He resolved one debt through a lump sum settlement payment and is making monthly payments to resolve the remaining two debts. Applicant has not completed the payment plans, so his debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant financed his participation in a real estate seminar with credit cards. He later believed the seminar was a scam. His participation in the seminar and his means of financing the payment was voluntary and within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not begin to address repayment of his three credit card debts until after he was interviewed by a government investigator. However, since then he has settled one debt and has payment plans for the remaining two debts. AG ¶ 20(b) has some application.

Applicant provided evidence that he resolved the debt in SOR ¶ 1.c and is participating in payment plans to resolve the remaining two credit card debts. AG ¶ 20(d) applies.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he deliberately failed to disclose on his January 2019 SCA that he had delinquent credit card debts because he was embarrassed. When asked about his finances by a government investigator, he did not disclose the debts until he was confronted with them by the investigator. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not make a prompt, good-faith effort to correct his omission, concealment, or falsification to the Government before the investigator confronted him with the facts. Instead, he told the investigator that he was meeting all of his financial obligations on time. When he was confronted with his delinquent debts, he admitted owing them and attributed them to his participation in a real estate investment seminar that he financed with his credit cards. He admitted his failure to disclose the debts on his SCA and to the investigator was because he was embarrassed. Applicant's conduct is not minor. He had two opportunities to honestly disclose his delinquent debts, but intentionally failed to do so. His embarrassment does not excuse his lack of candor and is not mitigating. His conduct casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

## 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 commonsense 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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 27 years old. He experienced financial problems after he financed his participation in a real estate seminar with credit cards. When he realized that the business venture was likely a scam, he failed to pay the credit cards. Although he did not take action to resolve these debts until after the security clearance process began, I find he has sufficiently addressed these debts, such that his finances are no longer a security concern. Applicant mitigated the financial considerations security concerns.

Of greater significance is Applicant's deliberate failure to disclose his delinquent debts on his SCA. Despite having an opportunity to disclose the information during his subsequent background interview, he did not do so until he was confronted with his debts by the investigator. The Government relies on applicants to be honest during their background investigations. If the investigator had not had the information available from a credit report, the government may not have learned of the financial security concerns and Applicant's falsification. Applicant's embarrassment is not a substitute for being honest. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns under Guideline F, financial considerations, but failed to mitigate the security concerns under Guideline E, personal conduct.

### **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.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge