



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



In the matter of: )  
)  
) ISCR Case No. 19-02328  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: Bruce R. Heurlin, Esq.

04/28/2020

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On October 16, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 November 11, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2020, and the hearing was convened as scheduled on March 3, 2020. The Government offered exhibits (GE) 1-3, which were admitted into evidence without objection. The Government's exhibit list was identified as

HE I. Applicant testified and offered exhibits (AE A-J) at hearing, which were admitted. Applicant's exhibit list was marked as HE II. DOHA received the hearing transcript (Tr.) on March 11, 2020.

### **Findings of Fact**

In his SOR answer, Applicant admitted both allegations, with explanations. His admissions are adopted as a finding of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 61-year-old employee of a federal contractor. He began working at his present job in December 2017. Except for two months of unemployment from October to December 2017, Applicant has worked for a federal contractor since 1998. He has held a security clearance for over 25 years without incident. He holds a bachelor's degree. He has been married for 30 years and has one adult son. (Tr. 21, 23, 26-27, 34; GE 1)

The SOR alleged one charged-off and one collection debt (a home improvement loan and a personal loan to pay for their son's private secondary education) totaling approximately \$81,000. The debts are established by a credit report from November February 2018, Applicant's SOR admissions; and his hearing testimony. (SOR ¶¶ 1.a – 1.o). (Tr. 24, 36-39, 55; GE 2)

In 2005, Applicant and his wife purchased a family home for approximately \$450,000. They financed this purchase with two loans secured by a primary and a secondary mortgage. Applicant earned approximately \$120,000 yearly at the time and his wife earned approximately \$75,000 yearly. Their monthly payments on both mortgages was approximately \$2,200 (the two mortgages were held by the same bank). They made their monthly mortgage payments until about 2010. (Tr. 34-35, 40-41, 51-53, 55)

In 2005, Applicant took out a home improvement loan of approximately \$45,000 (SOR ¶ 1.a). This loan was apparently not secured by his residence. Applicant incurred this loan to add a swimming pool to his property along with ancillary landscaping. Applicant estimated his monthly payments on this debt were \$400. In 2006 or 2007, Applicant obtained another non-secured personal loan to fund his child's private secondary education in the amount of approximately \$37,000 (SOR ¶ 1.b). Applicant incurred this loan because his child was associating with an undesirable crowd at his public school causing disciplinary and legal concerns. Applicant felt that sending his child to a private school away from his son's current associates would be in his child's best interests. He funded this education with the aforementioned loan. Applicant does not recall the amount of his monthly payments on this loan, but believes they were under \$1,000. Applicant claims that he made his monthly payments on both loans until approximately 2009, when his wife became ill and stopped working, thus reducing their overall income. The date of last action on the home-improvement loan was in March 2012 when it was in a "collection" status. The education loan was charged off in April

2012. Applicant did not receive IRS 1099-C, cancellation of debt notices, for either loan. (Tr. 36, 38-40, 42, 51-52, 5; GE 2)

Applicant's wife became ill in 2009, incurred additional medical treatment thereafter, and was unable to return to work. She has not applied for social security disability payments. As a result of this income loss, Applicant's residence was foreclosed in approximately 2010, when he stopped making his monthly payments upon the advice of his lender. This advice was predicated on allowing Applicant to qualify for a mortgage modification. However, a modification never occurred and Applicant lost the property through foreclosure. Between 2010 and 2012, Applicant claims that he sought to negotiate with the creditor holding the two SOR debts. He documented sending the creditor a letter in April 2012 requesting to negotiate lower payments on the two loans. He did not get a reply and had no further communications with this lender until after October 2019, when he received the SOR. Applicant admitted that he stopped paying on the two loans in 2012 because he became frustrated that the lender would not negotiate with him. Neither of the loans appear on his current credit report. (Tr. 38, 40-46, 52-53, 55-56; AE G-H)

Applicant provided a budget, which showed that he has approximately a \$1,000 monthly remainder after paying his regular monthly expenses. He testified that in November 2019, he obtained a \$34,000 loan to pay off several high interest credit cards. His monthly payments on this new loan is \$893. His credit report showed that he had made two payments as of February 2020. He has a retirement account valued at approximately \$100,000. His current income is approximately \$162,000 annually and he receives a \$1,800 monthly pension payment from an earlier job. (Tr. 46-47, 57-58, 62; GE 3; AE H-I)

Applicant was unable to provide copies of his recent job performance appraisals because they included proprietary information his company did not want made public. He provided copies of awards and certifications he has earned over his career. His work has secured five patents for his employers. He also provided six letters from current and former colleagues and personal friends who noted his trustworthiness, honesty, and other admirable character traits. Two colleagues recommended that Applicant retain his security clearance. (Tr. 33; AE B-F, J)

### **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 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant accumulated two significant delinquent debts, which remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Although Applicant's two delinquent debts were incurred from 2005 to 2007, they remain unpaid and therefore are deemed continuing current obligations. His decision to stop paying on these debts because he was frustrated that the lender would not negotiate lower payments with him casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not fully applicable.

Applicant's wife's illness resulting in her unemployment was a circumstance beyond his control. He also initially acted responsibly by contacting his lender to negotiate lower payments on the two debts, but his decision to stop making payments because the lenders refused to negotiate, and his failure to continue communicating with the lender until he received the SOR were not responsible actions. AG ¶ 20(b) is not fully applicable.

Applicant did not present evidence of financial counseling. Even though the two SOR debts have been removed from his credit report, there is no proof that he paid them. He failed to establish good-faith efforts to resolve his debts. Given the unpaid status of his debts, Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service, his awards and certifications, his character references, his wife's illness, which led to her unemployment, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient and untimely efforts to resolve his debts. He has not established a meaningful track record of debt management, as evidenced by his recent need to obtain a consolidation loan to pay high-interest credit-card debt, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

### **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.b:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge