



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02393  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

05/27/2020

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**Decision**

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CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 30, 2018. On October 22, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The DOD CAF acted 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* (January 2, 1992), as amended (Directive); 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.

Applicant answered the SOR on November 14, 2019, and requested a decision based on the written record without a hearing. The Government's written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on December 23, 2019. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM and submitted a reply, dated March 23, 2020. The case was assigned to me on May 12, 2020. Applicant provided Applicant Exhibit (AE) A in response to the FORM, and did not object to admission of his personal subject interview (PSI) summary (GE 5) in the record. Government Exhibits (GE) 1 through 5 and (AE) A are admitted into evidence without objection.

### **Findings of Fact**

Applicant is a 31-year-old system administrator for a defense contractor, employed since April 2018. He graduated from high school in 2007 and received a bachelor's degree in 2018. He has been married since 2008. Applicant served on active duty in the United States Air Force from 2009 to 2016. He was disciplined under Article 15, Uniform Code of Military Justice (UCMJ) (non-judicial punishment), for dereliction of duty, after he fell asleep while on armed flight-line security patrol. He also disobeyed an order to refrain from driving on base after he was caught driving with expired tags. He was discharged with a general discharge, under honorable conditions in 2016. He held a DOD security clearance while on active duty.

The SOR alleges Applicant owes approximately \$34,000 in 12 delinquent debts. In addition, the SOR alleges Applicant falsified his 2018 SCA by deliberately failing to disclose debts listed as SOR ¶¶ 1.a through 1.l. Applicant denied the Guideline F allegations under SOR ¶¶ 1.a, b, c, and f, and admitted SOR ¶¶ 1.d, e, g, h, i, j, k, and l, all with explanations. In addition, he admitted the Guideline E allegation under SOR ¶ 2.a, with an explanation. The SOR allegations are supported by sufficient evidence in the record.

SOR ¶ 1.a is a 2016 vehicle loan on which Applicant defaulted in 2016. Applicant's 2019 credit bureau report (CBR) shows the loan was opened in August 2016, and the last activity was in October 2016. The vehicle was repossessed in 2016 and the debt was charged off with a past-due amount of \$13,838. In his Answer to the SOR, Applicant claimed the loan was "closed off in December 21, 2016." He was unable to pay because he was attending school and his GI Bill payment was delayed until November 2016. He stated that by then, it was too late to catch up on the payments. Applicant claimed in his response to the FORM, that this account was "closed" based on a credit report entry, and he is disputing the reporting of the debt on his credit report. In an addendum to his Answer to the SOR and in his response to the FORM, Applicant stated that this debt was combined with another auto loan, and he now owes \$28,368 on both. He provided a credit report entry showing that the original SOR loan amount has not changed, and no documentary evidence showing payments on the account. This debt remains unresolved.

SOR ¶ 1.b is a charged-off bank debt for approximately \$5,748. Applicant incurred this debt while on active duty, but fell behind when he left the service and attended school. The debt was placed in collections, and Applicant is disputing the reporting of the debt on his credit report. In November 2019, Applicant stated that he offered to pay \$5 per month, but the collection agent wanted more. The debt remains unresolved.

SOR ¶ 1.c is a collection account for a delinquent auto loan for approximately \$5,396, opened in August 2012 with last activity in April 2013. It is a reported debt on Applicant's May 2019 CBR. The vehicle was voluntarily repossessed. Applicant stated that he disputed the debt as aged, and it was removed from his credit report. The account has been removed from his CBR in November 2019, but the debt remained unresolved.

SOR ¶ 1.d is a collection account for a delinquent loan in the approximate amount of \$4,090. Applicant stated in his Answer to the SOR that he obtained the loan while on active duty in order to meet payments on other debts. He began a payment plan on October 31, 2019 where he agreed to pay \$5 per month. In his response to the FORM, Applicant stated he began \$5 per month payments in November 2019, and paid monthly through February 2020. No documentary evidence showing regular payments on a repayment plan was submitted.

SOR ¶ 1.e is another loan Applicant obtained because he was behind on bills and very close to losing his car. He described this lender as a "predatory payday loan for military personnel." Applicant stated in his Answer to the SOR, that he agreed to make \$10 per month payments on October 28, 2019. In his response to the FORM, he reiterated his agreement to pay \$10 per month, but he provided an undated screen shot of one "successful payment." No other documentary evidence showing regular payments on a repayment plan was submitted.

SOR ¶ 1.f is a bank credit card that was charged off for approximately \$539. In Applicant's Answer, he stated that the account was "closed" in November 2016, after reaching the high-credit limit and the account became delinquent. Applicant claimed he resolved the debt by disputing it, and he believes the account is no longer reported on his CBR. He submitted a screen shot showing the reasons for the dispute, but no final decision. The account is reported on Applicant's 2019 CBR, and he did not submit a more recent credit report showing the account was removed.

SOR ¶ 1.g is a collection account for a credit card debt for approximately \$485. Applicant stated in his Answer to the SOR, that he opened the credit card account to improve his credit. He maximized the charges on the account and could not pay because he was not financially sound. He arranged to pay \$5 per month beginning in November 2019, and showed a payment in November. In his response to the FORM, Applicant stated that he made payments in December 2019 through February 2020, but attached only the November payment as evidence.

SOR ¶ 1.h is a delinquent cable provider account for approximately \$380. Applicant fell behind on rent and cable payments after leaving active duty, and moved out

of the house in which he was living. He contacted the creditor and agreed to pay \$52 per month beginning with a \$10 payment in November 2019. In his response to the FORM, Applicant stated that he can afford to pay \$52 per month, and plans to pay monthly until the debt is satisfied. He did not provide documentary evidence of any payments made on this debt.

SOR ¶ 1.i is another debt to a cable provider for \$149. Applicant stated in his Answer to the SOR, that he fell behind on this bill while on active duty due to a “severe lack of judgment.” He agreed to pay the full balance due at the end of December 2019. In his response to the FORM, Applicant stated that he agreed to pay the debt by January 2020, but failed to do so in order to save money for the expected birth of twins. He now intends to pay the debt by April 20, 2020, and used a credit card on March 16, 2020, to make a \$10 down payment as his promise to pay the balance in April.

SOR ¶ 1.j is an insurance company debt for \$103. Applicant stated he was young and made poor financial decisions, and fell behind on his insurance payments. He agreed to pay the full balance in January 2020. In his response to the FORM, Applicant again stated that he did not pay the balance as promised, but intends to make a \$50 payment in March, and pay the balance in April 2020.

SOR ¶ 1.k is a \$2,196 debt owed to a company managing Air Force military housing. Applicant left the home in 2016 and did not pay for damage to the property. Applicant contacted the creditor and agreed to begin paying \$180 per month for four months in 2020. He did not pay the debt earlier because they requested a lump-sum payment and Applicant had no savings. He noted that he is ashamed of his action and has since begun to improve himself. In his response to the FORM, Applicant had not made any payments because he has not received a written notice of the payment plan agreement in the mail.

SOR ¶ 1.l is a delinquent medical debt for approximately \$645. Applicant incurred the debt from a medical provider, and believed his military insurance would cover the costs. He stated that he attempted to contact the creditor, but their phone is no longer in service. The debt is reflected on a 2018 CBR, but is not reported on his 2019 CBR. In his response to the FORM, Applicant claims that he contacted the creditor in November 2019, but has been unable to reach them since.

In SCA Section 26, Applicant also asked to disclose delinquencies involving routine accounts; including whether in the past seven years he had a judgment; lien; repossession; defaulted loans; debts in collections; suspended, charged off, or canceled credit cards; or if he had been over 120 days’ delinquent on any debt or currently over 120 days’ delinquent on any debt. Applicant answered “no.” Applicant claimed in his Answer to the SOR, that he did not report his delinquent debts on his SCA because he did not know if the collections accounts were still on his credit report, or which accounts were open or closed. Applicant discussed his debts with the government investigator during his PSI, admitted there were numerous debts, and expressed his shame for his actions.

Applicant stated in his Answer to the SOR that he fell behind on debts while trying to satisfy another “payday lender,” and “everything snowballed out of control and [he] could not catch up.” He believes he learned from his mistakes and has improved as an adult. He is current on two car payments and he never missed a rent payment to his grandmother while he lived with her. He reported that he is current on his utility bills and rent with his present landlord. His credit score has improved, and he has been able to pay for in-vitro fertilization treatments and labor and delivery costs. He believes he now manages money more responsibly, and resents the implication that he is irresponsible. No evidence of his current financial status or financial counseling was submitted.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial

evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

## Analysis

### Guideline F: Financial Considerations

The security concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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.

Applicant noted his inability to pay debts while on active duty, and after leaving the military and attending school, attributing his problems to a delay in receiving GI Bill payments, and the need to satisfy a payday loan creditor. In response to his mounting debts, he resorted to using additional payday, bank, and credit-card lenders, and continued to fall behind. Applicant had two vehicle repossessions on loans that defaulted relatively quickly. Since he accumulated most of the debts in 2016, he has done little to satisfy them until the end of 2019 when his security eligibility came into question.

Applicant did not provide sufficient documentation relating to his SOR debts such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve a debt; or (5) other evidence of progress or resolution. However, I give Applicant the benefit of the doubt on payment plans for SOR ¶¶ 1.d, 1.e, and 1.g, to which he has made regular payments despite their small amounts. Efforts to resolve SOR ¶ 1.i are sufficient mitigation.

The remaining debts have not been adequately addressed by reasonable efforts to pay or legitimate disputes. Promises or plans for future debt resolution are insufficient to apply mitigation credit for responsible actions or good-faith efforts. There is no evidence of financial counseling, and there is insufficient assurance that his financial problems are being resolved and will not recur in the future. Overall, Applicant has shown a history of irresponsible spending without an ability to pay debts. Most of the debts were incurred in 2016 or before, but little was done to attempt to resolve them until after the SOR was issued. AG ¶¶ 20(a) – (d) are not fully applicable.

Although Applicant disputed several negative entries on his credit report, AG ¶ 20(e) requires that Applicant show that he “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.” He did not provide sufficient “documented proof” of the basis of the disputes or actions to resolve the issues, rather he generally admitted the existence of the debts, but disputed them because they were aged or closed accounts. AG ¶ 20(e) is not applicable with respect to the debts he contested.

Applicant’s financial status continues to raise significant doubts about his financial management decisions, personal responsibility, and ability to address his delinquent debts. I am not convinced Applicant makes good financial decisions, and his financial status continues to cast doubt on his reliability, trustworthiness, and good judgment.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose any delinquent debts or repossession of his vehicles on his April 30, 2018 SCA. The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred.



ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). The record evidence establishes that Applicant intentionally falsified his 2018 SCA. The evidence shows that Applicant clearly was aware of the existence of the debts and repossessions when he completed his SCA, although he may not have been aware of the credit reporting status of the debts at the time. Applicant discussed the delinquent accounts with the government investigator during his PSI. He acknowledged that he did not report his debts because “there were a lot of them and he was ashamed.” AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions fully apply to Applicant's failure to disclose at least one delinquent debt and the repossession of his vehicles on his SCA. In his SOR Answer, Applicant failed to take responsibility for the falsification of his SCA when he claimed that he did not know the status of his debts. His behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

## Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E in my whole-person analysis. I also considered Applicant's military service, employment history, financial difficulties, unemployment and underemployment. However, I remain unconvinced of his financial responsibility and ability, intent, and desire to resolve his financial obligations, and his judgment, honesty, and willingness to comply with rules and regulations.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

## 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.c, 1.f, 1.h – 1.k:	Against Applicant
Subparagraphs 1.d, 1.e, 1.g, and 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Applicant's application for a security clearance is denied.

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Gregg A. Cervi  
Administrative Judge