



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



In the matter of: )  
)  
) ISCR Case No. 19-02907  
)  
Applicant for Security Clearance )

**Appearances**

For Government: A. H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

07/22/2020

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 27, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on April 8, 2020, and requested a decision on the written record in lieu of a hearing.

The Government’s written case was submitted on May 6, 2020. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 22, 2020. He responded with a letter that I have marked as Applicant’s Exhibit (AE) A. The case was assigned to me on July 9, 2020. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

## Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since May 2017. He served on active duty in the U.S. military from 1986 until he retired with an honorable discharge in 2008. He deployed to Iraq from 2004 to 2005. He has a bachelor's degree that he earned in 2004. He is married with two adult children. (Items 2, 3)

Applicant has a history of financial problems. He was granted a security clearance in 2007, with a warning that "failure to resolve [his] delinquent debts or other subsequent unfavorable information may result in the suspension of [his] security clearance."<sup>1</sup> He was also "strongly advised to avoid any further incidents of failure to pay debts that [he] legally incurred." The memorandum with the warning notice is addressed to Applicant through his command, but there is no documentation in evidence that Applicant acknowledged receipt of the memorandum. (Items 4, 9)

Applicant attributed his recent financial problems to a period of unemployment from November 2015 to May 2016. He had his military retirement, unemployment compensation, and a part-time job officiating at sporting events, but he was unable to pay all his bills. (Items 2, 3; AE A)

The SOR alleges a mortgage loan that was \$26,293 past due, with a \$354,777 balance; a \$23,159 charged-off auto loan; nine miscellaneous delinquent debts; and a Chapter 13 bankruptcy case. Three of the delinquent debts, SOR ¶¶ 1.d, 1.i, and 1.j, are duplicate accounts. When two of the duplicate accounts are eliminated from the nine delinquent debts, there are seven miscellaneous debts totaling about \$4,750. Applicant admitted owing all the financial obligations.

Applicant stated during his February 2019 background interview that he was working on a modification to his mortgage loan. The October 2017 credit report indicates the loan was \$19,015 past due, with a \$336,444 balance, and in foreclosure. It also indicates that Applicant had made arrangements with the lender to make partial payments. The April 2019 credit report indicates the loan had been modified under a federal government plan. However, it also indicates that the loan was \$26,293 past due, with a \$354,777 balance, and a date of last action of March 2018. The May 2020 credit report indicates the loan was \$44,712 past due, with a \$370,148 balance, and a date of last payment of September 2018. (Items 3, 5-7)

Applicant was current on the auto loan in 2017. The October 2017 credit report indicates the loan was opened in September 2014 for 74 months at \$674 per month. The high credit was \$28,445, and the balance was \$22,318. The April 2019 credit report indicates the loan was charged off with a high credit of \$20,893 and a \$23,159 balance. The date of last action was June 2018. The May 2020 credit report indicates the loan

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<sup>1</sup> The SOR did not allege financial issues in 2007. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

was charged off for \$20,893. It lists an actual payment of \$674, and a date of last payment of August 2019. The balance on the loan was \$20,227. (Items 5-7)

Applicant filed a Chapter 13 bankruptcy case in March 2019. The case was dismissed the same month for failure to file all the required documents. Applicant stated that he did not continue the bankruptcy process because he felt that he could address his finances on his own. He indicated that his credit score does not determine the kind of person he is and how hard he worked to provide for his family. He asserted that he planned to pay his debts, and that he was on track to restore his credit score. He did not indicate what he was doing to correct his financial issues. Some of the debts are not listed on the most recent credit reports. Except for the limited payments that are gleaned from the credit reports and discussed above, there is no evidence of any actual payments toward the debts alleged in the SOR. (Item 5-8; AE A)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in July 2017. He did not report any adverse information under the financial questions. He denied intentionally providing false information about his finances. He stated that his wife handled the family's finances, and with the exception of the mortgage loan, he was unaware that the debts alleged in the SOR were delinquent. He stated that he did not think about the mortgage loan when he completed the SF 86. (Items 2, 3)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

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 the 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 EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including defaulted mortgage and auto loans, and other delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.d, 1.i, and 1.j are duplicate accounts. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶¶ 1.i and 1.j are concluded for Applicant.

SOR ¶ 1.l alleges the Chapter 13 bankruptcy case that was filed and dismissed the same month. The bankruptcy case does not raise security concerns that are independent of the security concerns that are already alleged in the SOR. SOR ¶ 1.l is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

Applicant was unemployed from November 2015 to May 2016. That was beyond his control. He had his military retirement, unemployment compensation, and a part-time job officiating at sporting events, but he was unable to pay all his bills. The auto loan did not become delinquent until 2017 or 2018, so it is difficult to ascribe that to his unemployment.

Applicant made minimal payments toward the debts alleged in the SOR. He asserted he planned to pay his debts. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The security concerns raised by Applicant's delinquent debts are not mitigated.

### **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 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. 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not report any adverse information under the financial questions on his July 2017 SF 86. He denied intentionally providing false information about his finances. He stated that his wife handled the family's finances, and with the exception of the mortgage loan, he was unaware that the debts alleged in the SOR were delinquent. He stated that he did not think about the mortgage loan when he completed the SF 86. The auto loan was not delinquent when he completed the SF 86. There is insufficient evidence to conclude that Applicant intentionally provided false information about his finances on the July 2017 SF 86. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant.

### **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):

(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 E and F in my whole-person analysis. I also considered Applicant's many years of honorable military service, including his deployment to Iraq.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns.

### **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.h:	Against Applicant
Subparagraphs 1.i-1.j:	For Applicant
Subparagraphs 1.k:	Against Applicant
Subparagraphs 1.l:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

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.

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Edward W. Loughran  
Administrative Judge