



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



In the matter of: )  
)  
) ISCR Case No. 20-00138  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel  
For Applicant: *Pro se*

07/28/2020

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On April 13, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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 within the DOD on June 8, 2017.

Applicant answered the SOR on April 21, 2020, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on June 5, 2020. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 5. Applicant provided a timely response to the FORM and submitted documents marked as Applicant Exhibits (AE) A through D. There were no objections by either party to the documents and all are admitted into evidence. The case was assigned to me on July 22, 2020.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.e. He denied the SOR allegations in ¶¶ 1.f through 1.p. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. He graduated from high school in 2009 and received a certificate of achievement from a technical school in 2013. He has been employed by a federal contractor since April 2018. From 2013 to 2018, he worked for two different private companies. He also worked from 2011 to 2013 while attending school. Applicant disclosed on his May 2018 security clearance application (SCA) that he is not married and does not cohabit with anyone. He disclosed he has a child, five years old, and a stepchild who is seven years old. (Item 3)

Applicant attributed his financial issues to a period when he was attending school, was young, and he did not have the discipline or knowledge about finances. He stated in his FORM response: "I am fully aware of most of my debt and did not make much effort to resolve my debt until it was brought to my attention." (AE A)

Applicant has approximately \$45,000 of student loan debt. The loan amounts were disbursed from 2011 to 2013 and the accounts are reported in his November 2019 credit report as sold or transferred in 2017. Applicant provided a document to show that his monthly payment is supposed to be \$193. The document shows he made a payment of \$5 in August 2019; \$35 in September 2019; and \$5 in October 2019. He stated in his answer to the SOR that the accounts alleged in SOR ¶¶ 1.g through 1.p have been consolidated into one account, and he is making payments. In his FORM response, he provided a copy of a budget that includes a payment of \$193. He did not provide evidence of any other past payments or that he has been making his budgeted payment. The document from the creditor shows that the past due amount is zero and the current balance owed is \$46,992. It appears the creditor has agreed to accept minimal payments. (Item 2, 5; AE A, D)

In Applicant's answer to the SOR, he stated that he was offered a settlement agreement from the creditor for the debt in ¶ 1.a (\$20,003) if he made consistent payments for eight months. In his FORM response he provided a copy of an agreement dated June 2020, which requires monthly payments of \$100. The document shows a balance of \$19,803, so presumably Applicant has made two payments. His November 2019 credit report shows the last activity on this debt was in 2015. (Items 2, 5; AE C)

The charged off debt in SOR ¶ 1.b (\$2,962) has been delinquent since 2016. He stated in his SOR answer that he has a weekly payment plan to satisfy the debt. He provided a copy of a receipt showing he made one payment of \$50 in April 2020. The account is included in his budget with a prospective payment of \$200. No other receipts were provided to show additional payments. (Items 2, 5; AE D).

The charged off credit card debt in SOR ¶ 1.c (\$1,061) has been delinquent since approximately 2016. Applicant said that he intended to pay the debt with his Government stimulus check. In his FORM response, he stated he was still making payment arrangements with the creditor. It is included in his budget. (Items 2, 5; AE A, D).

The debt in SOR ¶ 1.d (\$5,700) is for a repossessed vehicle. Applicant stated in his answer to the SOR that he made payment arrangements to satisfy the debt. He provided a copy of an agreement dated April 2020. The agreement requires he make payments of \$190 a month, beginning in May 2020. The debt is included in his budget. Applicant did not provide supporting documents that he made the first two payments for May and June 2020, or any other payments. (Items 2, 5; AE A, D)

Applicant stated in his SOR answer that he had “a plan and action to pay off the full amount” of the medical debt in SOR ¶ 1.e (\$585). (Item 2) In his FORM response, he stated he would pay the bill within a month. He did not provide any documents to show the debt is paid. (AE A)

Applicant denied he owed the debt alleged in SOR ¶ 1.f (\$147) stating it had been paid. His November 2019 credit report shows the date of last activity on the account was October 2018. In his FORM response he provided a receipt indicating the debt had been satisfied. (Items 2, 5; AE B)

Applicant stated that his supervisor has assisted him in making a budget. Applicant’s budget shows a negative balance of \$110. I have considered that his monthly estimate for car repairs (\$300) may not be a recurring expense. He stated in his FORM response that he is making an effort to arrange payment plans and agreements for his delinquent debts. (AE D)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 numerous delinquent debts that began accumulating from approximately 2015 and have not been paid or resolved. 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;
- (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 admitted he owed many of the delinquent debts alleged in the SOR. He denied his student loans were delinquent. He failed to take action to resolve his delinquent debts until after receiving the SOR. Many of the debts have been delinquent since 2015 and 2016. He provided minimal evidence to show he has made consistent payments on his debts. For the debts he did make payments, he only provided evidence of one or two payments. Applicant has been fully employed since 2014. I am unable to conclude that financial problems are unlikely to recur and do not cast doubts on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to being young and accruing while he was attending school. Applicant received his technical certificate in 2013. He has been gainfully employed since then, more than seven years. Many of his debts became delinquent in 2015 and 2016, after he completed school. The evidence does not demonstrate that his financial problems were due to conditions beyond his control. In addition, for the full application of AG ¶ 20(b), Applicant must also provide evidence that he acted responsibly under the circumstances. He did not provide evidence of actions he took to resolve any of his debts, until after he received the SOR. AG ¶ 20(b) does not apply.

Applicant recently made payment agreements with some creditors, but he did not provide sufficient evidence of recent payments. He also states he has plans to pay certain accounts or intends to make future arrangements. His intentions or promises to pay in the future are not a substitute for reliable past conduct. Applicant has resolved the debt in SOR ¶ 1.f and AG ¶ 20(d) applies to this debt. However, there is insufficient evidence at this time that he is adhering to a good-faith effort to repay his overdue. He has not yet established a consistent payment record. AG ¶ 20(d) does not apply to his other debts. Applicant's supervisor assisted him in making a budget, but there is no evidence that he has received financial counseling or that his debts are under control. AG ¶ 20(c) has limited application.

### **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 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.

Applicant is 30 years old. Most of his debts have been delinquent since 2015 and 2016. Although, his student loans do not show they are past-due, the evidence shows he only made \$45 worth of payments in 2019 toward a growing debt of now more than \$46,000. He included the \$193 required payment in his budget and other amounts to pay his delinquent debts, but has not submitted proof that he has actually made consistent payments toward his debts. Despite being employed since receiving his technical certificate in 2013, he accumulated delinquent debt, which he failed to address until after he received the SOR in 2020. He recently made attempts to make payment arrangements with some of his creditors. However, he has a limited financial track record of consistent payments to his creditors. Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

### **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.e:	Against Applicant
Subparagraphs 1.f-1.p:	For 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