



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



In the matter of: )  
)  
) ISCR Case No. 20-00319  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

03/24/2021

**Decision**

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 May 18, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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's answer to the SOR was undated, and in it he 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 January 8, 2021. 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 6. Applicant provided a response to the FORM and submitted documents that are marked Applicant Exhibits (AE) A through C. There were no objections to any of the evidence offered, and it is admitted into evidence. The case was assigned to me on March 4, 2021.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except ¶¶ 1.d, 1.f and 1.h, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He is a high school graduate and has earned some college credits, but not a degree. He was married in 2009 and divorced in 2012. He has a child from the marriage. He was in the Marine Corps Reserve from 2009 to 2014, when he was discharged due to unsatisfactory performance in the ready reserves. His discharge was under other than honorable conditions. He has been employed by a federal contractor since March 2019.

The SOR alleges 13 delinquent debts (¶¶ 1.a-1.m) totaling approximately \$36,101. These debts are corroborated by Applicant's admissions in the SOR; disclosures and admissions in his security clearance application (SCA) from April 2019; his admissions during his May 2019 background interview; and credit reports dated April 2019 and November 2019. (Items 1, 2, 3, 4, and 5)

In Applicant's SCA, he disclosed the delinquent debts alleged in SOR ¶¶ 1.a through 1.e, 1.g, 1.i. and 1.j. The debt in SOR ¶ 1.d is for delinquent child support. Applicant stated in his background interview with a government investigator that the state where he resides automatically withholds child support payments from his paycheck. This is how the state processes such payments. When he changed jobs his child support payments stopped because his new employer did not take action to withhold the payments. Applicant's federal income tax refund was involuntary applied to the delinquent child support balance. Applicant provided documentary proof dated February 2020 that this debt is resolved. (Items 1, 2, 3)

Concerning the delinquent debts, Applicant disclosed in his SCA that he was either making monthly payments or was planning to make monthly payments and the debts would be resolved by the end of the year (2019). When he was interviewed in May 2019, he said he was either making small payments towards many of the alleged debts and they would be resolved by the end of the year; was working with the creditor to settle the debt; would start making payments soon; or would pay the debt by the end of the year. (Items 2, 3)

In Applicant's answer to the SOR for those debts he admitted he owed, he indicated he had payments arrangements. He said he was to pay as follows: SOR ¶ 1.a-

\$300 a month; ¶ 1.b-\$67 a month; ¶ 1.c-\$50 a month; ¶ 1.e-\$40 a month; ¶ 1.g-\$40 a month; ¶ 1.i-\$20 a month; ¶ 1.j-\$75 a month; ¶1.k-\$25 a month; and ¶1.l-\$50 a month.

In Applicant's FORM response, he said he had one more payment to resolve the debt in SOR ¶ 1.j (\$599) and a couple of payments to resolve ¶ 1.i (\$718). He also stated that the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.g were the only remaining debts to be paid. He did not provide documentary proof to support his assertions. (Item 1; AE A)

The debt alleged in SOR ¶ 1.a is for a repossessed vehicle from 2015, he explained in his SOR answer that he returned the vehicle to the dealership when he could no longer make the payments. He received a letter from the bank and a lawyer regarding the debt, but he did not pay it. He has some questions about the balance owed. It is not resolved. (Items 1, 2, and 3).

In his SOR answer, Applicant provided copies of receipts from January to March 2020 to show he made payments towards the medical debts alleged in SOR ¶¶ 1.f (\$1,374) and 1.h (\$921) His receipts reflect four payments totaling \$1,147. In his response to the FORM, he provided a receipt (\$288) that he said was for the medical debt in ¶ 1.l (\$338). Applicant claimed that these payments resolved the debts, but did not provide corroborating documentation that his lesser payments had fully satisfied the debts or were accepted as settlements for the debts. Insufficient evidence was provided to resolve these debts. (Item 1; AE A, B)

In Applicant's response to the FORM, he provided a receipt from September 2020 to show the debt in SOR ¶ 1.m was paid in full. It is resolved. (AE C).

Applicant told the government investigator that his financial problems began in December 2012 when his mother was diagnosed with cancer, and he took out two loans to help the family (SOR ¶¶ 1.b and 1.c). He made payments on the loans until sometime in 2013 when he switched jobs and could no longer afford to pay them. He said he was "young and dumb" and stopped the payments. Other accounts that became delinquent were for credit cards used for his personal purchases, cell phone accounts, and medical expenses. (Item 3)

## **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 in approximately 2013 that are not 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 began experiencing financial difficulties in about 2013 when he stopped making payments on loans and other accounts that then became delinquent. He stated he took two loans out to help his family after his mother was diagnosed with cancer. When he changed jobs he could not afford the loan payments. In his 2019 SCA, he stated most of the debts would be paid by the end of the year. Applicant did not take action to pay any of his debts until early 2020 when he made some payments towards medical debts. He indicated the medical debts were resolved, but did not provide sufficient proof to conclude his payments have resolved the debts. In his answer to the SOR, he stated he had payments agreements with his creditors, but did not provide proof that he was making regular monthly payments in compliance with agreements. He provided proof that he has resolved his child support debt and one other debt that is paid in full.

Applicant failed to take action on his debts until after he applied for a security clearance. In 2012, he obtained two loans to help his family, but he failed to act responsibly when he changed jobs and stopped making payments in 2013. He stated he is making payments to resolve his other delinquent debts, but failed to provide sufficient documentary proof. Due to the age of the debts, and Applicant's lack of action on resolving them for many years, his conduct casts doubt on his reliability, trustworthiness, and good judgment. I find AG ¶ 20(a) does not apply.

Applicant's mother's illness was a circumstance beyond his control that impacted his finances, but he did not act responsibly when he changed jobs and stopped making payments on the two loans he owed. He also accumulated other delinquent debts. I find AG ¶ 20(b) has minimal application. There is no evidence he has received financial counseling. Applicant has made payments on a couple of his medical debts, but insufficient evidence was provided to conclude they are resolved. He stated he has payment plans to resolve his other delinquent debts, but failed to provide documentary proof of the agreements or that he is in compliance and making regular payments. AG ¶ 20(c) does not apply as Applicant has not received financial counseling and there are not clear indications Applicant's financial issues are under control. AG ¶ 20(d) applies to SOR ¶ 1.m. It does not apply to the remaining debts alleged as the evidence does not support that Applicant is adhering to a good-faith effort to resolve his delinquent debts.

### **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 also has numerous debts that have been delinquent for many years. He 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e-1.l:	Against Applicant
Subparagraph 1.m:	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