



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-00837  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

03/25/2021

**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 June 25, 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 answered the SOR on July 19, 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 December 28, 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 7. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 7 are admitted into evidence. The case was assigned to me on March 4, 2021.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. He is a high school graduate. He married in 2008 and divorced in 2012. He remarried in 2017. He has two children, ages 12 and 3, and two stepchildren ages, 7 and 4.

The SOR alleges seven delinquent debts totally approximately \$30, 816. Applicant filed Chapter 13 bankruptcy in 2015. It was dismissed for failing to make the prescribed payments. In his SOR answer, he explained that he filed bankruptcy because his fiancé at the time was responsible for paying the bills while he was away. She failed to make the payments, and he was unaware until he began receiving notices from his creditors. He then explained that his bankruptcy was dismissed because his employer had stopped making payments to the bankruptcy trustee. He was unaware that the payments had stopped. He filed Chapter 7 bankruptcy in May 2020, after applying for a security clearance in October 2019. The Chapter 7 bankruptcy discharged was in September 2020. (Items 2, 3, 5, 6)

The SOR alleges that Applicant's child support is past due in the amount of \$730 (SOR ¶ 1.b). In his SOR answer, he stated that when he changed jobs in 2019, it took his employer 45 days to begin an automatic draft for his child support payments. In his December 2019 background interview with a government investigator, he said he was caught up on his child support payments after the delay from his employer. In his SOR answer, he said in March 2020 he was receiving unemployment benefits and only \$117 was being withheld for child support. He said that all of his child support is "cleared except approximately \$180, which was included in my Chapter 7, bankruptcy." The bankruptcy documents clearly state that "domestic support obligations" are not dischargeable in bankruptcy. His December 2019 credit report lists his child support in arrears in the amount of \$730. This was prior to a period of unemployment. Documents provided by Applicant show that his monthly obligation is \$510, and he occasionally does not pay the full amount, but extra is withheld during subsequent months. His document reflects that as of July 2020, he was in arrears for \$180. (Items 1, 2, 4, 6, 7)

Applicant's largest debt is for a repossessed vehicle (SOR ¶ 1.c; \$26,524-charged off). It appears the vehicle was purchased for \$41,039 in 2014. In his background interview, he told the investigator that his former wife handled all of the bills and he was unaware this account was delinquent. He could not recall the date he opened the account or when it became delinquent. The account was held individually by Applicant. It was included in his Chapter 13 bankruptcy, but when that was dismissed he returned the

vehicle to the creditor. The amount owed was the deficiency. Applicant said he attempted to reach a payment agreement with the creditor, but was unsuccessful. He told the investigator he would call the creditor within the week to make an agreement to pay the debt. In his SOR answer, Applicant stated: "I admit that I was delinquent to [creditor]. As of the date of this letter my debt with [creditor] has been cleared and closed stating paid in full." Later in his SOR answer, he said: "In January 2020, I made an agreement with [creditor] in the amount of \$100 every month until paid off. All of my outstanding debt was included in my Chapter 7 Bankruptcy. All accounts are paid in full and states closed as of the date of this letter." (Item 2) He failed to provide any information for why he failed to pay this debt. His Chapters 13 and 7 bankruptcy documents and his December 2019 credit report reflect the account was opened in February 2014. This purchase was made two years after his divorce. (Items 2, 4, 6, 7)

The debts alleged in the SOR were discharged in Chapter 7 bankruptcy, except the child support obligation. The debts in SOR ¶¶ 1.d (\$1,219); 1.e (\$1,107); 1.f (\$507); 1.g (\$389); and 1.h (\$304) are all medical debts. In his December 2019 interview, he told the investigator that he was going to call the creditors within a week and find out if the accounts belonged to him, and if they did he would satisfy them. In his SOR answer, he admitted owing the debts and including them in his bankruptcy. Applicant did not provide an explanation for why he failed to pay these debts. (Items 2, 7)

The debts alleged in the SOR are established by Applicant's SOR answer; a credit report from December 2019; Chapter 7 bankruptcy documents; and his statements to a government investigator in December 2019. Applicant alluded to a period of unemployment for his failure to pay his child support, but failed to provide specific information on when it started, how long he was unemployed, or his financial situation at that time. He did not provide any current financial information. (Items 2, 4, 6, 7)

## **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 handing 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 2015. He filed Chapter 13 bankruptcy in 2015 that was later dismissed for failure to comply with the payment schedule. 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 all of the debts in the SOR. He attributed his financial problems to others' failures to ensure his bills were paid. He claimed his fiancé failed to pay his

bills, and he was unaware they were delinquent; his employer failed to withhold his child support and he was unaware of it at the time; and his employer failed to pay his bankruptcy trustee through automatic withdrawal and it was subsequently dismissed, which he was also unaware of at the time. Applicant does not have a grasp on his personal finances. After his divorce in 2012, he purchased an expensive vehicle, which he subsequently defaulted on the loan. He did not provide an explanation for why he did not pay his medical bills. After he applied for a security clearance, he filed Chapter 7 bankruptcy to have his debts discharged, which they were in September 2020. Applicant failed to be responsible regarding his finances. There is insufficient evidence that his financial problems were the result of conditions that were beyond his control. AG ¶ 20(b) does not apply.

Based on the limited evidence submitted, I am not convinced that future financial problems are unlikely to recur. Although bankruptcy is an authorized legal means to allow one to start over, it does not negate consideration of the actions that led to financial problems in the first place. Applicant's failure to pay his debts casts doubt on his reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Although evidence was not provided, Applicant likely complied with the financial counseling mandated for filing bankruptcy. However, he failed to provide information as to his current financial situation. Therefore, I am unable to conclude that his finances are under control. Bankruptcy is not considered a good-faith effort to repay overdue creditors or resolve debt. AG ¶¶ 20(c) and 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 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 failed to meet his burden of persuasion. He did not provide sufficient evidence to conclude he has established a track record of being fiscally responsible. 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.h:	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 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