



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 19-01876
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esquire, Department Counsel  
For Applicant: *Pro se*

07/13/2021

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On September 30, 2019, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 or after June 8, 2017.

In an undated response, Applicant addressed the allegations raised in the SOR and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on January 5, 2021. On March 5, 2021, a notice of hearing was issued setting the matter for March 24, 2021. The hearing was convened as scheduled. The Government presented six exhibits (Exs.), which were accepted without objection as Exs. 1-6. Applicant offered four exhibits, which were accepted without objection as Exs. A-D. Applicant was given to April 5, 2021, to provide any additional documents.

On April 5, 2021, Applicant emailed six additional documents. These items were accepted as Exs. E-J without objection. The record was then closed. Based on the record as a whole, I find Applicant mitigated personal conduct security concerns, but failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 33-year-old information technology (IT) operational analyst who has been with the same employer for about a year-and-a-half. He earned an associate's degree in computer science. Single, he is the father of an 11-year-old child and a three-year-old toddler. The youngest child lives with him.

When he was younger, Applicant was not very responsible with money. In contrast, he now tries to make sure all of his bills are timely paid. (Tr. 14) He is trying to keep his debt under \$40,000 and work with creditors to set up repayment arrangements. He presently earns approximately \$113,000 a year. (Tr. 44) He has a net monthly remainder of about \$100. (Tr. 47) He has about \$2,000 in his checking account, around \$65 in his savings account, and approximately "a couple of thousand" in his retirement account. (Tr. 48) His only financial counseling to date has been from friends and family. (Tr. 49)

At issue in the SOR are the following delinquent debts:

1.a – Student loan collection account (\$18,786) – *Signed rehabilitation agreement* - Initially, Applicant was confused with regard to his student loans because they had ceased appearing in his credit report. (Tr. 23) He thought they had been resolved through a debt consolidator he had engaged that ultimately went bankrupt. Applicant established a repayment plan with the lender and has made a payment toward this debt, but payments on federal student loans have been deferred under the March 2020 Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. (Tr. 22-23) Under that Act, required payments on student loans have been suspended through the end of September 2021. Applicant completed the rehabilitation paperwork on his student loans after the issuance of the SOR (Ex. G) He intends to start making regular payments after September 2021.

1.b – Charged-off account (\$2,664) – *Unresolved* – Applicant was unable to make payments on this account because of family circumstances. (Tr. 24) It has since been charged-off and is no longer on his credit report. (Tr. 24-25)

1.c – Child support arrearage (\$1,724) – *In repayment* – Applicant showed he is having automatic deductions from his salary paid toward his outstanding balance. (Tr. 26; Ex. E)

1.d – Medical collection (\$578) – *Paid* – Applicant previously paid this debt. (Tr. 26-29; Ex. F, mislabeled as regarding 1.e in his April 5, 2021, cover email)

1.e – Medical collection (\$366) – *Unresolved* - (Tr. 29-30). The status of this debt is unknown.

1.f – Adverse judgment (\$300) – *No evidence of payment* - (Tr. 30)

1.g – Adverse judgment (\$2,281) – *Satisfied* - (Tr. 31, 33; Ex. I) This debt was satisfied in 2018.

1.h – Adverse judgment (\$1,677) – *No evidence of dispute* – Applicant testified that he disputed this debt, but there is no evidence of dispute or satisfaction. (Tr. 33)

1.i – Adverse judgment (\$610) – *No evidence of payment* - Applicant believes this judgment is the same as the one above at 1.f. (Tr. 34) He believes they were paid, but provided no documentation to that effect.

1.j – Utility collection (\$414) – *No evidence of payment* - Applicant stated this was paid, but provided no documentation reflecting payment. (Tr. 35)

1.k – Telecommunications collection (\$1,027) *No evidence of satisfaction* - This debt is related to a telephone Applicant purchased from an ex-girlfriend. (Tr. 36) Applicant stated it was removed from his credit report after the ex-girlfriend took over the account and that she satisfied the balance. (Tr. 36) No documentation was presented showing this balance was resolved.

1.l – Charged-off account (balance unknown) – *Unresolved* - Applicant believes the balance was approximately \$4,000 and related to an automobile purchase. (Tr. 37) He stated that he is “waiting on a solution for a debt zero letter or zero balance letter.” (Tr. 37) He believes he does not owe anything on the account because it was charged off. (Tr. 38)

1.m – Collection account (\$3,862) – *Status unknown* - Applicant denied this allegation. He cannot identify the account. (Tr. 38)

1.n – Student loan collection account (\$11,450) – *Signed rehabilitation agreement* - Applicant believes this is related to the student loan account at 1.a. (Tr. 38) He showed he recently arranged for repayment as described above. (Tr. 38-39; Ex. G)

1.o – Collection account for five government-related accounts (\$1,071) – *Status unknown* - Applicant is unsure what these debts are for and describes them as “ongoing.” (Tr. 40)

1.p – Collection accounts for tolls (\$1,582) – *Status unknown* - Applicant claims that these accounts were paid, but provided no documentation to that effect.

1.q – Collection accounts for five medical debts (\$1,573) – *Status unknown* - Applicant is unaware of these accounts. (Tr. 41) No documentation was presented showing he has investigated their origin.

1.r – 2015 Delinquent Federal taxes (\$1,500) – *Filed* - Applicant showed he has recently filed his federal tax return for 2015 with the Internal Revenue Service (IRS). (Tr. 41-43, 49; Ex. H)

1.s – Failure to file and pay Federal income taxes for 2015 – see 1.r above.

Applicant noted that he intends to “continue making sure that I pay 2015 [taxes], get the taxes straight, [and] make sure that I stick with this payment plan for my school student loans so that I can come out of default. Other than that, I don’t have any major debts.” (Tr. 51) No current budget was discussed. He submitted a favorable performance evaluation and positive character references. (Exs. C-D)

Between 2009 and 2018, Applicant was cited for multiple civil misdemeanor driving-related infractions. In November 2009, he was convicted of reckless driving and in about June 2010 he was convicted of driving under suspension. Also, in June 2010, Applicant was convicted of operating an uninsured motor vehicle. In July 2010, he was convicted of knowingly operating an uninsured motor vehicle, reckless driving, and driving under suspension. In April 2011, he was convicted of both driving under suspension and reckless driving. In 2012, he was twice convicted of driving under suspension. In August 2013, he was charged with false report/summon to law enforcement. In January 2014, he was convicted of eluding police and driving under suspension, while in April 2014 he was convicted of reckless driving, another misdemeanor.

In 2015, Applicant was convicted of open container, operating an uninspected vehicle, having a counterfeit inspection sticker, public swearing/intoxication, and resisting arrest, all misdemeanors. In January 2016, he was convicted of driving under the influence. In June 2018, he was convicted of reckless driving and driving under suspension. As with his other charges and convictions, these were all misdemeanors. He admits all related allegations and only disputes the reckless driving misdemeanor from April 2014 (SOR allegation 2.n).

Applicant attributes these violations to his youth, rushing to help with the care of his first born child, and other family circumstances. (Tr. 16, 19) In particular, he cites to his haste in making weekly three-and-a-half hour trips back-and-forth from his home to see his ailing mother, who was suffering from advanced-stage cancer. (Tr. 17-19) She ultimately passed away at the end of 2015. He has had no additional driving infractions since June 2018. Applicant has paid all related fines and he successfully completed a safe driver program. (Tr. 20-21) His driver’s license was reinstated in 2018. (Tr. 21) Today, he is more careful with his driving in order to become a better role model for his children. (Tr. 55) He has no issues with alcohol. (Tr. 55)

### **Policies**

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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, and transcends duty hours. The Government reposes a high degree of trust and confidence in those granted such access. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

### **GUIDELINE F – Financial Considerations**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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 these factors can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Here, the Government offered documentary evidence reflecting that Applicant has multiple delinquent debts and that he failed to file his 2015 federal taxes. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Under these facts, four conditions could mitigate related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problems 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 under control, and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant concedes that his irresponsibility with money when he was younger led to much of his current delinquent debt and financial distress. Today, he stresses, he is trying to be more responsible. His documentation appears to show that he is now set to begin making payments on about \$30,000 in student loans in the near future. He also showed that he is having payments made toward his child support arrearage, paid one of two medical bills, and satisfied one adverse judgment for approximately \$2,281. His documents reflect that he has prepared, and most likely filed, his 2015 tax return with the IRS. However, there is no evidence of payment dispute, or correspondence regarding, his remaining delinquent debts. There is no evidence that he has received financial counseling. While he is clearly sincere in wanting to resolve his financial situation, little progress can realistically be done with a net monthly remainder of only \$100 and scant financial savings. At best, AG ¶ 20(d) applies in part.

## **GUIDELINE E - Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

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. . . .

The following disqualifying condition is applicable to the concerns raised by Applicant's frequent misdemeanor driving, qualification, and conduct infractions:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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, and

AG ¶ 17(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.

Applicant's infractions mostly occurred when he was in his 20s, rushing back and forth to help care for his ailing mother or help care for a young child. He acknowledges his recklessness and negligence at the time. With his eldest child now 11, he has comported his behavior appropriately in order to serve as a role model. Moreover, all of the infractions at issue were misdemeanors. Applicant has completed a safe driving course. He has paid all related fines and his driver's permit is valid. He has not had another infraction in over three years. Under these facts, AG ¶ 17(c)-(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 33-year-old information technology (IT) operational analyst who has earned an associate's degree in computer science. He is single. Applicant is the father of two children, ages 11 and 3. The youngest child lives with him.

Applicant has made some progress in addressing his delinquent debts, with much of the progress coming recently. He does not have a long track record of addressing his delinquent debts and straightening out his financial situation. Undeniably, some progress has been made. His ability to continue going forward, however, is dubious. In September 2021, he is to start making payments on two student loan accounts with significant balances; other delinquent debts remain outstanding. Applicant failed to describe a viable strategy for addressing these delinquent debts with a net monthly remainder of only about \$100 and highly limited savings. While he is sincere in his desire to address his financial situation, he has not shown that he is presently able to do so. While time and maturity have helped mitigate personal conduct security concerns related to his misdemeanor infractions, financial considerations security concerns remain unmitigated.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-d:	For Applicant
Subparagraphs 1.e-f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o-q:	Against Applicant
Subparagraphs 1.r-s:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 1.a – 1.v:	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 interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge