



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-02139  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Price, Esq., Department Counsel

For Applicant: *Pro se*

06/02/2021

---

**Decision**

---

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

On October 30, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG). On November 20, 2020, Applicant answered the SOR, admitting the allegations and requesting a hearing. On March 15, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of

hearing, scheduling Applicant's case for April 2, 2021. The hearing was held as scheduled. I received four Government exhibits (GE 1 – GE 4) and two Applicant's exhibits (AE A and AE B), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the close of the hearing, I left the record open at Applicant's request to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted 26 exhibits which I incorporated into the record as AE C through AE AB. The transcript (Tr.) was received on April 16, 2021.

### **Findings of Fact**

Applicant is a 51-year-old single man with one child, age ten. He has been married twice, and both marriages ended in divorce. Applicant is a veteran of the U.S. Army, serving honorably from 1987 to his retirement in 2008. He retired as a master sergeant (E-8) (Tr. 18). While in the Army, he supervised as many as 40 soldiers. (Tr. 27) When he retired, he received the Soldier's Medal, the highest award for heroism not involving the enemy. (AE T) He held a security clearance for his entire military career. (Tr. 26)

Applicant earned a bachelor's degree in business administration in 2004, and a master's degree in human resource management in 2005. (Tr. 25) Since 2014, he has been working for a federal contractor as a functional analyst. (GE 1 at 12)

The debt listed in SOR subparagraph 1.a is not a delinquent automobile loan, as alleged. Instead, it is a timeshare property that became delinquent in 2018, leading to its repossession in 2019. (GE 3 at 3: AE E) Applicant paid the monthly payment through automatic debit card payments. He contends that the account became delinquent after the debit card expired and he neglected to switch the payment to his new debit card. (Tr. 49) He recognizes that this was careless; however, he contends that he overlooked this bill, as he was preoccupied with the expense and care of his elderly parents. (Tr. 41) Specifically, before his mother's death in February 2019, she required 24-hour, in-home nursing care. (Tr. 39) Before Applicant's father's death in January 2018, he required long-term care in a nursing home. These elder care and medical costs overlapped for several months until Applicant's father's death. In the time before Medicare began reimbursements for these expenses, Applicant became financially overwhelmed. (Tr. 41)

On April 21, 2021, Applicant contacted the creditor and negotiated a settlement for \$3,885. (AE F at 2) He satisfied the debt through four payments made between April 21 and April 26, 2021. (AE F)

The debt alleged in subparagraph 1.b stems from a contract executed by Applicant and a roofing company on July 19, 2014. Applicant agreed to pay \$21,221 for a new roof. (AE A) That day, he contracted with another company to finance the purchase of the roof. (Tr. 69) Under a financing plan, Applicant borrowed the purchase price of the roof from the financing company and agreed to repay it through monthly \$332 payments over 15 years. (AE D) Applicant was initially displeased with the high interest rate, contending that it was higher than promised. Consequently, on July 21, 2014, he contacted the roofing company and expressed his intent to cancel the project. (AE B) In response, the roofing company

proposed to modify its contract with Applicant. (Tr. 54) Under the proposed modification, the roofing company agreed to issue a \$5,800 rebate to Applicant as soon as it received the funds from the financing company. (AE A at 5; Tr. 56)

Applicant agreed to the modification. (Tr. 59) Subsequently, after the roofing company completed the work, the payments were debited automatically from Applicant's checking account to the loan financing company. (Tr. 59) Applicant did not receive the \$5,800 from the contractor, as agreed, however. He reached out to the roofing company several times "to no avail." (Tr. 69) He never sought a legal remedy for the alleged breach. (Tr. 69) Instead, Applicant stopped making payments to the loan financing company in 2017, after having made payments consistently for three years. (Tr. 72)

Applicant acknowledges that he should not have stopped payment to the loan financing company, and that instead, he should have pursued a claim against the roofing company for not paying him the rebate, as promised. (Tr. 72) Over the past year, Applicant has contacted the loan financing company to resolve the delinquency. The loan company rejected his effort to renegotiate the interest rate. (Tr. 71-72) As of the date of the SOR, Applicant owed a \$29,417 balance to the loan financing company, of which approximately \$9,644 was delinquent. (Answer at 2)

After the issuance of the SOR, Applicant contacted the loan financing company and attempted to develop a payment plan. (Answer at 2) A company representative told him that the debt had been written off, and that he would be receiving an IRS Form 1099C for cancellation of a tax year 2020 debt. (Answer at 2) The IRS discharged the tax debt on August 20, 2020. (AE D) Approximately \$20,986 was discharged, and this amount will be added to Applicant's reportable gross income for the 2020 year. (Answer at 2)

The debt alleged in subparagraph 1.c corresponds to the debt alleged in subparagraph 1.a. Specifically, it is a revolving timeshare maintenance fee, delinquent in the amount of \$591, with a balance of \$4,229. (Answer at 2) As with the debt alleged in SOR subparagraph 1.a, Applicant had been making payments through autopay, but inadvertently stopped when he received a debit card with a new account number. (Tr. 72) In March 2020, when an agent interviewed Applicant, the debt alleged in subparagraph 1.a remained outstanding, and it was still outstanding nine months later when DOHA issued the SOR. In March 2021, Applicant contacted the creditor to arrange a settlement agreement. Applicant satisfied the debt later that month. (AE G)

Applicant did not focus on his bills between 2017 and 2019 when his parents were sick because "bills didn't matter" then. (Tr. 38) He knew this philosophy was wrong, but "it was family first." (Tr. 38)

Applicant earns \$153,000 per year. (Tr. 32) He receives a \$1,600 net monthly pension from the Army, and disability benefits from the Department of Veterans Affairs, totaling \$1,500 month. (Tr. 33) Applicant has approximately \$19,000 deposited in a checking account, \$5,000 in four savings accounts, and a total of approximately \$160,000

invested in a thrift savings plan, a 401(k) account, and an e-Trade account. (Tr. 37; AE K – AE L; AE N – AE Q)

Applicant owns his home and owns an investment property. He has approximately \$130,000 in equity in his home, and more than \$100,000 of equity in his rental property. (Tr. 102, 103) He has been making extra payments on his home mortgage in an effort to satisfy the principal before it is due. (Tr. 100)

Applicant has four credit cards. Their balances collectively total less than \$100. (AE X through AE AA) He recently paid off his car note, and he is current on his child support payments. (AE J, M)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns about financial considerations are set forth in AG ¶ 18:

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 which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information . . . . An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's history of delinquent debt generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

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 problem from a legitimate and credible source . . . , and there are clear indications that the problem is being resolved or is 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's financial problems coincided with the deterioration of his parents' health and their subsequent deaths. During the two years that they were sick, they required costly nursing home care and medical expenses, much of which Applicant paid before Medicare began reimbursing them. Conversely, when faced with this financial crisis, Applicant admittedly chose not to address his delinquencies, choosing to neither pay them, nor reach

out to the respective creditors. Moreover, after his parents passed away, he still procrastinated and did not pay his bills until more than a year after their deaths. Consequently, although these circumstances were beyond Applicant's control, AG ¶ 20(b) is only partially applicable because Applicant did not act responsibly.

Applicant has resolved the debts alleged in subparagraphs 1.a and 1.c. His annual income, including his disability pay, totals approximately \$168,000. Additionally, he has multiple investment portfolios and savings accounts, and he has approximately \$230,000 of equity in his home and a rental property. He has satisfied his car note and he is current on his child support payments. Under these circumstances, any negative inference generated by his failure to timely pay the timeshare debts and his failure to pay the roofing company before it was charged off and canceled is outweighed by his current financial stability. I conclude that AG ¶¶ 20(c) and 20(d) apply.

### **Whole-Person Concept**

In addition to applying the Guideline F adjudicative factors, I have considered the whole-person factors listed at AG ¶ 2(d). Although Applicant certainly should not have ignored his delinquent debts when he was faced with the costs of caring for his parents, this does not minimize the nature and seriousness of the family crisis that generated his financial problems. Ultimately, he contacted his creditors and began making payment arrangements. Currently, the only unpaid bill is a debt that was charged off, reported to the IRS as income from a canceled debt. Applicant's revolving credit accounts are minimal, and he has ample income, savings, and investments to weather another financial crisis if one arises. Given the presence of rehabilitation and the minimal likelihood of recurrence, I conclude that his finances pose no potential for pressure, coercion, or duress.

In reaching this conclusion, I also considered the length of time that Applicant has held a security clearance, and the extraordinary heroism that he displayed which led to the receipt of the Soldier's Medal when he was in the military.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Marc E. Curry  
Administrative Judge