



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-02422
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

07/01/2021

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes approximately \$49,853 in delinquent debts that he has largely ignored because of his financial situation. Clearance eligibility is denied.

**Statement of the Case**

On November 9, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On January 5, 2021, Applicant responded to the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Referral of the case to the Hearing Office was delayed because of the COVID pandemic. On February 27, 2021, Department Counsel indicated that the Government was ready to proceed to a hearing. On April 12, 2021, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national security interests of the United States to grant or continue a security clearance for Applicant. On receipt of the case assignment and file on April 20, 2021, I informed Applicant of the possibility of an online video hearing, which he accepted. Following a successful test of the Defense Collaboration Services (DCS) system, on May 4, 2021, I issued a notice scheduling Applicant's DCS video teleconference hearing for May 24, 2021.

The online hearing was held as scheduled. Four Government exhibits (GEs 1-4) were admitted into the record without any objections. Applicant presented no exhibits, but he testified, as reflected in a hearing transcript (Tr.) received on June 2, 2021.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of November 9, 2020, Applicant owed delinquent debts totaling \$52,529 on 12 accounts (SOR ¶¶ 1.a-1.i). When he responded to the SOR allegations, Applicant stated:

For all of the above I admit to being delinquent. A bankruptcy lawyer was hired approx. 1.5 years ago [and] was given a down payment but did no work. I had no means (money) to continue to pursue.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 40-year-old engineering technician. Married since December 2011, he and his spouse have no children. Applicant served honorably on active duty in the U.S. military from June 1999 to December 2014. He held a DOD security clearance for the duration of his military service, and in August 2008, he was determined eligible for access to sensitive compartmented information (SCI). (GE 1.) He was separated from the military in December 2014 for failing to maintain physical fitness standards. (GE 4; Tr. 23-24.) He had struggled to meet height and weight standards and "finally [he] just couldn't do it anymore." (Tr. 24.)

After his military discharge, Applicant began working as a quality inspector for a local company almost immediately for some income while seeking better employment. He and his spouse began to fall behind in their payments on some debts. (GEs 1, 3.) In April 2015, Applicant left that job to work for his current employer, a defense contractor. He was granted a DOD secret clearance in February 2016. (GEs 1-2.) He has been assigned to his current contract since March 2017. (GE 1.) As a condition of his employer's contract with the U.S. military, Applicant's job requires him to hold a security clearance, although he does not handle classified information with any regularity. He testified that he has not

handled any classified documents in several years, but he needs a clearance for base access. (Tr. 23.)

In August 2019, the DOD Continuous Evaluation Program (DCEP) developed unreported information from checking Applicant’s credit report. Trans Union reported on May 16, 2019, that Applicant owed \$45,693 in delinquent debts on ten accounts. (GE 2.)

On March 17, 2020, Applicant completed a Questionnaire for National Security Positions (SF 86). In response to inquiries concerning any delinquency involving routine accounts in the last seven years, Applicant reported only one past-due debt, but he also explained that after he separated from the military “unexpectedly,” he and his spouse got behind on their bills. (GE 1.) On his SF 86, Applicant indicated that a bank credit-card account had been charged off for approximately \$6,000 in December 2019, and that he has been sued for the debt. He stated that his spouse has been in contact with the creditor bank to set up a payment plan. (GE 1.)

A check of Applicant’s credit on April 25, 2020, revealed a record of extensive reliance on consumer credit over the years. While Applicant had paid on some accounts according to their terms, 12 accounts had been charged off or placed for collection or both. The salient details of the debts are set forth in the following table.

Debt	Delinquency History	Payment status
1.a. \$11,507 in collection	Last activity Apr. 2018; \$10,969 for collection Nov. 2018; \$11,507 balance Mar. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.b. \$6,845 charged off	Credit card opened Mar. 2011; \$6,845 for collection May 2018; \$6,845 balance Apr. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.c. \$6,171 charged off	Credit mattress purchase Dec. 2017; \$6,171 charged off Oct. 2018; \$6,171 balance Mar. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.d. \$5,593 charged off	Revolving charge opened Apr. 2012; last activity Feb. 2018; \$5,593 charged off Nov. 2018. (GEs 2-3.)	No payments. (Tr. 16.)
1.e. \$4,153 in collection	Credit card opened Apr. 2016; last activity Apr. 2018; \$4,153 for collection Nov. 2018; \$4,188 balance Dec. 2018 (GE 2); \$4,153 past-due balance Apr. 2020. (GE 3.)	No payments. (Tr. 16.)

1.f. \$3,618 in collection	Credit account opened Mar. 2015 for spouse's dental care; last activity Apr. 2018; \$3,618 for collection Nov. 2018; \$3,618 balance Apr. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.g. \$3,450 charged off	Credit card opened Sep. 2015; last activity Mar. 2018; \$3,450 charged off Nov. 2018; \$3,450 balance Apr. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.h. \$3,427 charged off	Credit card opened Apr. 2012; last activity May 2018; \$3,427 charged off Nov. 2018; \$3,427 balance Apr. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.i. \$2,680 charged off	account information shows likely same debt as SOR ¶ 1.j.	See SOR ¶ 1.j.
1.j. \$2,627 in collection	Credit card debt from Jan. 2018; charged off Dec. 2018 for \$2,680; \$2,627 collection balance May 2019; unpaid as of Apr. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.k. \$2,060 charged off	Credit card opened Apr. 2016; last activity Mar. 2018; \$2,060 charged off Nov. 2018; \$2,060 balance Mar. 2020. (GEs 2-3.)	No payments. (Tr. 16.)
1.l. \$398 charged off	Joint auto lease with high credit \$8,150 opened May 2015; last activity Oct. 2018; \$398 charged off Jan. 2019; unpaid as of Apr. 2020. (GE 3.) Applicant believes it is for unpaid property tax. (Tr. 29.)	No payments. (Tr. 16.)

As of November 2019, Applicant was 30 days late in his \$232 monthly car payment on a loan obtained in February 2017 for \$12,373. His spouse was making timely payments of \$357 per month on an automobile lease obtained in February 2018 for \$12,089. (GE 3.)

On May 19, 2020, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that his financial situation began to decline when he was deployed in 2013, and his spouse depleted their savings of about \$10,000 by purchasing kitchen appliances, a washer and dryer, and an entertainment center. (GE 4: Tr. 24-25.) On his separation from the military, he cashed out his Thrift

Savings Plan (TSP) and used the \$5,000 received to pay bills and living expenses. His spouse was unemployed at the time. His first job after his discharge paid him only \$30,000 to \$35,000 annually, which was a significant loss of income from his annual pay of \$80,000 in the military. He started with his current employer in April 2015 at \$46,000 annually. He and his spouse resorted to credit cards to purchase groceries and clothing, and to pay bills. By the time his spouse found a job as an administrative assistant at an annual salary of approximately \$24,000 in 2016, they were struggling to pay their credit-card balances. (GE 4.) Applicant did not consider taking over handling his household finances. (Tr. 25.)

In 2017, Applicant's pay increased to \$53,000 annually, and with his spouse's income, it brought their household income to \$77,000 annually, but their debt continued to mount. Applicant was distracted after the death of his mother in 2017. He told the investigator that he knew at the time that they had credit-card debt, but he did not realize the severity of their debt. (GE 4.) At his hearing, he admitted that his spouse had shown him notices that they received in the mail; that he was aware what was happening but that there was nothing he could do. (Tr. 26.)

When confronted by the investigator about the various accounts on his credit record, Applicant expressed surprise to learn that he owed about \$45,000 to \$50,000 in collection debts, but he did not dispute the debts after speaking with his spouse, who manages their joint finances. He indicated that the credit-card debts were joint accounts. (GE 4.) However, the credit cards are reported on his credit record as individual accounts. (GE 3.) He explained at his hearing that his spouse used his information and opened the accounts, albeit with his knowledge. (Tr. 35-36.) Applicant told the OPM investigator that he was embarrassed about his financial situation, and that he did not pay close attention to his household's finances. However, he also admitted that he knew that there were times in 2019 when he and his spouse had to wait for a paycheck before they could buy food. Applicant stated that he had not received financial counseling but he had contacted an attorney about possibly filing for bankruptcy. He had not considered using a financial agency to help manage his debts because he believes there is a lot of fraud in that industry. As for his plans going forward, Applicant reportedly stated:

The \$50,000 plus debt is a lot. I hope the bankruptcy works out. If not I'll have to reevaluate my situation. A fresh financial start will be good for us. My wife got a new job in 10/2019. She now brings home close to the same amount of money I make. I am certain we make enough money now to pay our day to day bills and living expenses. I don't think we have the finances to keep up with our bills with this sort of debt, but I'm certain we will work it out.

Applicant added that he and his spouse were living from paycheck to paycheck, but they have reduced their restaurant dining, and their situation should improve now that his spouse was earning about \$2,500 a month. He stated, and his April 2020 credit report (GE 3) shows, that he and his spouse were no longer using credit to pay living expenses. (GE 4.)

Applicant's spouse started a new job in March 2020. She has since received two promotions, although has not yet received the pay increase from her latest promotion to account manager. He and his spouse estimate that they would have to pay \$800 a month under a Chapter 13 bankruptcy plan, which they cannot afford before his spouse receives the increase in her income. (Tr. 16-18.) Applicant was unable to provide any specifics about their household finances, including about his spouse's income. She continues to handle their finances. (Tr. 20.) He clarified at his hearing that he never talked to the bankruptcy attorney, although his spouse "said she did." (Tr. 20-21.) Applicant has not contacted any of the collection entities holding his debts to determine whether they would be willing to settle for less than full balances. (Tr. 21, 26.) He testified that it did not cross his mind, but also that he did not think that his creditors would work with him. (Tr. 27.)

Applicant and his spouse moved to their current residence in February 2020. (GE 1.) They pay rent of almost \$1,000 per month (Tr. 30-31.) The rent at their previous residence, where they lived for 14 years, went from \$825 to \$850 per month. (Tr. 31.) Applicant and his spouse did not have any savings for several years. In the last year, they have managed to save approximately \$2,000. (Tr. 32.) Applicant earned \$22 an hour with his current employer from April 2015 to March 2017. His hourly wage has been \$27 since March 2017. (Tr. 34-35.) Applicant's supervisor told him that their employer has financial management information available, but Applicant "didn't do anything with it." (Tr. 36.) He cannot pay his debts so he did not think the information would be helpful to him. (Tr. 37.)

## **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 ¶ 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. 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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are articulated 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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

As of the November 2020 SOR, Applicant owed almost \$50,000 in credit balances that were charged off or in collections. Such substantial delinquency amply establishes disqualifying conditions AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant has the burden of establishing sufficient mitigation to overcome the financial concerns raised by his failure to meet his financial obligations according to their repayment terms. One or more of the following conditions under AG ¶ 20 may apply in whole or in part:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) cannot reasonably apply because the delinquencies are ongoing. The Appeal Board has repeatedly held that unresolved debts constitute a continuing course of conduct. See e.g., ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

Applicant has a case for some mitigation under AG ¶ 20(b). While his December 2014 military discharge was unwanted, it should not have come as a surprise. He lost his career for failure to maintain physical standards, an issue that he had struggled with for several years prior to his discharge. Yet, the significant decrease in income once he entered the civilian sector severely compromised his ability to remain current on his financial obligations, so AG ¶ 20(b) applies in that regard. However, even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether he has since acted in a reasonable manner to address



his financial difficulties. See ISCR Case No. 05-11366 at 4, n. 9 (App. Bd. Jan. 23, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component of sound financial judgment is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep debts current or settle his debts. Applicant's evidence falls considerably short in that regard. He knew as of 2019, if not before then, that he and his spouse were having serious financial difficulties such they had to hold off buying essentials, such as groceries, until they received a paycheck. While he may not have been able to make any payments on credit-card balances, he made no effort to educate himself about his debts. During his OPM interview, he was surprised to discover that he owes almost \$50,000 in past-due credit balances. Despite knowing that those outstanding delinquencies are of concern to the DOD and could cost him his clearance and possibly his job, he continues to ignore them. Even with respect to an intended bankruptcy filing, he has allowed his spouse to deal with the attorney and knew little about the attorney's advice. He has not met with the attorney himself. AG ¶ 20(b) does not fully apply.

Neither AG ¶ 20(c) nor AG ¶ 20(d) has been established. Applicant admitted at his hearing that he has made no progress toward resolving any of the debts. He has had no financial counseling, despite learning from his supervisor that their employer offers online financial education. The Appeal Board has held that an applicant must demonstrate "a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." See ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018), citing, e.g., ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018). Applicant's plan to file for bankruptcy is not enough to trigger AG ¶ 20(d) in mitigation. The Appeal Board has previously explained what constitutes a good-faith effort to repay creditors or otherwise resolve debts, as follows:

In order to qualify for application of [the 'good-faith' mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good faith 'requires a hosing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she related on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith"] mitigating condition.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

A bankruptcy discharge under Chapter 7 or a track record of timely bankruptcy payments under a Chapter 13 plan could trigger AG ¶ 20(c), in that an applicant would no longer have legal liability for repayment of those debts subject to a Chapter 7 discharge, and a track record of Chapter 13 payments could well indicate that the debts are being

resolved. However, it would be premature to apply AG ¶ 20(c) without proof of a discharge or compliance with a Chapter 13 plan. Applicant has yet to file a bankruptcy petition. AG ¶ 20(e) is satisfied only as to the debt in SOR ¶ 1.i, which account information shows is likely the same debt as the collection debt in SOR ¶ 1.j.

In Applicant's favor, he and his spouse no longer rely on credit cards to purchase items. They have reduced their expenses by eliminating much of their restaurant dining. He expects their financial situation to improve with his spouse's recent promotion. However, based on the record before me, his financial situation presents an unacceptable security risk. The financial considerations security concerns are not mitigated.

### **Whole-Person Concept**

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding involving an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant is not required to fully satisfy his debts to be eligible for a security clearance. However, even considering his limited means, he has not done enough to dispel the security concerns that persist because of his serious delinquencies. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant.

## 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
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant

## Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge