



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



In the matter of: )  
)  
) ISCR Case No. 19-01562  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2021

**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 December 13, 2019, the Defense Counterintelligence and Security Agency 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 on June 8, 2017.

Applicant answered the SOR on January 20, 2020, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via the Defense Collaboration Services (DCS) system for July 14, 2021. I convened the

hearing as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant objected to GE 5. His objection was sustained. GEs 1 through 4 were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A through C. There were no objections, and they were admitted into evidence. DOHA received the hearing transcript on July 22, 2021.

### **Findings of Fact**

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

Applicant is 48 years old. He is a high school graduate and has earned some college credits. He married in 2011 and has a 26-year-old stepchild. He has worked for the same employer since 2005. His current annual salary is about \$60,000. His wife is employed and her current annual salary is about \$72,000. She has been employed steadily since 2010. Applicant has volunteered as a firefighter and emergency medical technician and medical director for ten years. He has also served on the Board of Directors for the fire department. Applicant also volunteered with the American Red Cross as a storm shelter director during hurricanes. (GE 1; Transcript (Tr.) 18-20, 55, 54)

The SOR alleges five debts totaling approximately \$27,438. Applicant attributes his financial problems that occurred in about 2010 or 2011 to when he helped some family members with medical expenses. He was unable to recall the amount.

The debt in SOR ¶ 1.a (\$12,188) was for a loan to purchase a vehicle in 2007. Due to an illness in the family in about 2010 or 2011, he allocated funds to help them and failed to pay the loan. He attempted to refinance the loan, but due to the age of the vehicle at the time, he was unable. The vehicle was voluntarily repossessed in about 2012. He recently attempted to negotiate a settlement, but the creditor wanted \$5,000 immediately, and Applicant was unable to pay it. The debt is unresolved. (Tr. 37-41)

The debt in SOR ¶ 1.b (\$7,453) is for a credit card that was opened about 2007. Due to the medical issues in his family, he defaulted on the account in about 2010 or 2011. Applicant testified he has not taken action to resolve this debt. (Tr. 41-43)

The debt in SOR ¶ 1.c (\$1,270) is a collection account from 2018 owed for medical services that Applicant believed were covered by his medical savings account. The amount owed exceeded the balance in the medical savings account. Applicant was contacted by a law firm representing the collector and an agreement was made in 2020 whereby Applicant would make payments of \$100 a month. He provided an account summary of his payments. From March 2020, when the agreement began, to July 2021, he failed to make seven monthly payments. A balance of approximately \$600 remains to be paid. (Tr. 28-31, 41-45, 51; AE A)

The debt in SOR ¶ 1.d (\$394) is a collection account. Applicant provided a document of a proposed payment arrangement to pay the creditor \$49 a month beginning in August 2021, with the final payment due in December 2021. At the time of hearing, payments had not started. (Tr. 42-45 GE 2; AE C)

The debt in SOR ¶ 1.e (\$6,133) is a judgment from 2013. This was for a loan Applicant obtained for a sailboat that was repossessed during the time he experienced financial hardship in 2010 and 2011. He stated in 2013, when the judgment was entered, he began making monthly payments of \$114 for ten months. He said that in 2013 he was unable to contact the creditor. He said he was unable to locate the original creditor. He did not provide any documents to substantiate any payments or attempts to resolve the judgment. (Tr. 46-49)

Applicant has other delinquent debts on accounts that were opened in 2019 and went to collection in May 2020 that were not alleged in the SOR. He is attempting to resolve them. He admitted that it was after his receipt of the SOR that he began to address some of his delinquent debts. He plans to tackle the smaller debts first. He said his current finances are fine, and he and his wife live within their means. They own 2020 and 2021 vehicles. His wife has about \$6,000 in her savings account. It is not a joint account. He does not have a savings account. He has about \$6,000 in a pension plan. Applicant's wife handles the finances. He stated his wife has a budget, but he has not taken the initiative to access it. He has not participated in financial counseling. (I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider such in my whole-person analysis, in mitigation, and when making a credibility determination.) (Tr. 31-35, 49-66)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

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 five delinquent debts that he began accumulating in about 2010 or 2011 totaling approximately \$27,438. 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 attributed his financial problems to helping some family members with medical expenses in about 2010 or 2011. This was a condition beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. He has a payment plan with one creditor that began in March 2020, but he has made inconsistent payments. He has a payment plan with another creditor that was to begin in August 2021. He has not taken action to resolve the two largest debts and the judgment. Applicant admitted that he failed to take any action to resolve his delinquent debts until after he received the SOR in December 2019. The family medical issues that impacted his finances occurred more than ten years ago. His debts are ongoing. I cannot find that future problems are unlikely to recur. His failure to do anything about his delinquent debts for years casts doubt on his reliability, trustworthiness and good judgment. He has not acted responsibly. AG ¶ 20(a) does not apply. AG ¶ 20(b) has minimal application.

Applicant has not participated in financial counseling and there are not clear indications his problems are under control. AG ¶ 20(c) does not apply. He has a payment plan for one debt, but has made inconsistent payments. He also has a payment plan to resolve another debt, but he had not yet started the payments. There is insufficient evidence that Applicant is adhering to a good-faith effort to repay his overdue creditors, despite his payment plans. AG ¶ 20(d) does 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's delinquent debts began accumulating in 2010 or 2011. He failed to take action to resolve his debts until after he received the SOR. He has two payment plans. One he has made inconsistent payments and the other he had not begun making payments at the time of his hearing. The timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 17-03229 at 4 (App. Bd. Jun. 7, 2019).

