



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



In the matter of: )  
)  
) ISCR Case No. 20-01283  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2021

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant mitigated the financial considerations security concern established by his three delinquent debts. Two of the debts have been paid and resolved, and the remaining debt is being resolved under a settlement agreement. His debts are being resolved and are under control. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 17, 2017, Applicant submitted a security clearance application (SCA). On July 24, 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 DCSA CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

In an undated response, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on February 17, 2021.

On March 12, 2021, DOHA issued a notice scheduling the hearing for April 2, 2021. Applicant reported in late March 2021 that he was soon leaving employment with his clearance sponsor and did not want to process his case. The April 2, 2021 hearing was therefore cancelled by mutual agreement. In mid-April, 2021, however, Applicant reported that he still needed a clearance, with a different employer. His case was then rescheduled. (Tr. 4-6, 9, 81-84)

On May 4, 2021, DOHA issued a new notice scheduling Applicant's hearing for May 11, 2021, that date having been arranged with Applicant by e-mail on or about April 20, 2021. (Tr. 4-6) The same day, I issued a Case Management Order to the parties by e-mail. It concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic. The parties were ordered to submit and exchange their proposed exhibits in advance of the hearing, and they did so.

The hearing convened as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1-6, all of which were admitted without objection but for GE 2, the unauthenticated summary of Applicant's background interview, which was not admitted. (Tr. 17-20) Applicant testified and offered Applicant's Exhibits (AE) A-F. Applicant's exhibits were all admitted without objection. I held the post-hearing record open until May 21, 2021, to allow Applicant the opportunity to submit additional information. (Tr. 116) He timely submitted three documents, which were marked as AE G, AE H, and AE I and admitted without objection. They are identified in the Facts section, below. Department Counsel's May 17, 2021 e-mail in response is placed in the record as a hearing exhibit, and I have considered Department Counsel's argument. The record closed on May 21, 2021, and DOHA received the hearing transcript (Tr.) on May 24, 2021.

### **Findings of Fact**

Applicant admitted SOR ¶ 1.a and denied SOR ¶¶ 1.b and 1.c, each with a brief explanation. He referenced exhibits in his Answer but did not provide any at that time. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He was married from 1997 to 2011, when he and his wife divorced. (Tr. 34-35) They have one son, now age 24. He also has a son, born in March 2012. His son lives with his mother on Guam. (Tr. 35, 87-88; GE 1 at 20). Applicant attested that he is the sole source of income for his younger son and his mother. (Tr. 96-97) Applicant has not remarried. (Tr. 35) He lives with his girlfriend. (Tr. 42)

Applicant earned his Bachelor's degree online from state university O in October 2008 and continued advanced studies with the same institution until December 2009. (GE 1 at 11) He said he need only take his final exam to earn a Master's degree. (Tr. 42, 77)

Two of his SOR debts are student loans to an account connected to state university O. Applicant disclosed on his SCA that he had student loan debt. (GE 1 at 30-32)

Applicant served for 20 years on active duty in the U.S. Navy, retiring in December 2014 as an E-6 (petty officer first class). Beginning in January 2013 or January 2014, he also worked the night shift with a defense contractor on the same Navy base, until he retired from active duty. (Tr. 34; GE 1 at 12-14) He continued to work at the base until April 2021.

From late 2017 to January 2019, Applicant also worked as a ride-share driver at night. (Tr. 45-46) He left that job when he began working the day shift for his current employer, another defense contractor. He now works for that defense contractor full time, his current clearance sponsor. (Tr. 81-84; AE H) He works as a logistics analyst, and earns an annual salary of \$82,000 (Tr. 33, 70) He also receives \$1,526 in monthly disability and \$730 in monthly retirement. (Tr. 70-71) Applicant has had a security clearance since early in his Navy career. (Tr. 30, 43; GE 1 at 28)

SOR ¶¶ 1.b (\$8,889) and 1.c (\$7,445) are student loan accounts with state university O that are allegedly in collection status. The account numbers are not listed in the SOR allegations. Applicant denied the allegations, asserting that the debts had been paid. (Tr. 35-36, 40-41, 54-57, 63)

A July 2017 credit report lists two student loan accounts with state university O as "Pays as Agreed." (GE 6 at 6) An August 2018 credit report lists both accounts as having a zero balance. One of them (Acct. 336) says "transferred and sold." The second (Acct. 337) says, "Closed or paid account. Zero Balance." (GE 5 at 3) However, an April 2019 credit report lists both SOR ¶¶ 1.b and 1.c as in collection, with the amount owed as alleged (\$8,889 and \$7,445, respectfully) (GE 4 at 2) A January 2021 credit report lists both accounts as having a zero balance, and reflect the status of "Pays as Agreed." (GE 3 at 7) An April 2021 credit report provided by Applicant shows similar information. (AE D at 57-59; excerpts at AE B, AE C)

Applicant also provided a pay stub from November 2018 showing two garnishments for student loan payments (reflecting when the garnishments began) and another pay stub from May 2020, showing a zero balance on the two garnishments (to show when they ended). (Tr. 60-61, 68-69) The student loan creditor(s) are not identified on the pay stubs. (AE E; Tr. 56-57) Applicant also provided checks from the U.S. Department of Education reflecting payment to him of "federal student loan refunds" because of certain overpayments he made. (AE G; Tr. 62, 66-67). He testified that he no longer owes student loans, either to the federal government, or to state university O. (Tr. 63) **SOR ¶ 1.b and 1.c are resolved for Applicant, as the government's own evidence shows no balance is due. (Tr. 59-60)**

SOR ¶ 1.a (\$27,224) is a consumer credit-card debt with a bank that caters to U.S. military personnel, in collection. (GE 3, 4, 5, 6) Applicant testified that the debt was a joint debt with his ex-wife, and said he was current on it until about five years ago. The credit

reports support this, as they show that the account was opened in 2006; the last payment was made in 2016, and it was reported for collection in 2017 (GE 3-GE 6) He said he was left with the debt after the divorce, since his wife was not employed. (Tr. 36-40)

Applicant attempted several years ago to negotiate a settlement but was not able to do so. (Tr. 50-53) More recently, in April 2021, he negotiated a settlement to pay \$1,127 a month for 12 months (for \$14,000). (AE A; Tr. 51-53) Applicant had made two \$1,127 payments on the settlement by the time the record closed. (AE F, AE I) Given the nature of the agreement and the singular nature of this debt, I believe these payments will continue and the debt will be resolved in due course. **SOR ¶ 1.a is being paid and will be resolved under the settlement agreement.**

Applicant attributed his debts to a divorce. He said he was “stuck with all the financial hardship,” while his wife assumed none of the financial liability. He said he has made efforts to resolve his debts. (Tr. 30-32) He testified that after the divorce, he had multiple credit cards to pay down. He said that the debt at SOR ¶ 1.a was the last one. (Tr. 76)

Applicant’s largest monthly expenses are his cars. Applicant bought one car in April 2020, and financed about \$27,000 of the purchase price. He said the monthly payments are \$513. Credit reports in the record show several months of current payments. (GE 3 at 4; AE D at 34) He bought a second car a month later, for \$56,000, with monthly payments of \$924. Credit reports in the record show several months of current payments. (GE 3 at 2; AE D at 37) He testified that he bought the more expensive car as a present for himself, having paid off some taxes and student loans. He had also received a raise. (Tr. 72-74, 78-79)

Applicant has also assumed the car payments for his 24-year-old son, who left the car with his father after he moved outside the continental United States with his wife who is in the military. (Tr. 72-74, 88-89) The car is a hatchback, and its monthly payments are modest, at \$217.21. (Tr. 79-80) Applicant also pays \$1,000 in monthly child support for his younger son. (Tr. 75). He rents his home (\$1,640 per month). (Tr. 72)

Review of his current credit reports show no unalleged delinquencies. (GE 3; AE D) Applicant testified that he participated in credit counseling with his wife during their marriage and that “of course” he keeps a budget and watches his finances. (Tr. 77-78) He testified that during his time in the Navy, he had counseled sailors on the importance of maintaining their clearance for their future employment. (Tr. 30)

The president and CEO of Applicant’s employer considers Applicant “an ideal employee.” He works independently and excels at his job. He is dependable and reliable. He exemplifies the company’s core values of quality, integrity, teamwork, and success. His job includes sanitizing company documents and manuals for disclosure to foreign governments, a difficult job requiring “exceptional trustworthiness, specialized knowledge, and keen attention to detail.” His U.S. government customer feels he has been invaluable. The author offers his “strongest recommendation” that Applicant be granted a clearance. (AE H)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following AGs are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant denied SOR ¶ 1.b and 1.c, his two delinquent student loans with state university O, asserting that they had been paid. While this proved correct, they were delinquent on a previous credit report, from April 2019. SOR ¶ 1.a, the delinquent credit-card debt, is also established. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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, or 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 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.

Applicant denied the two student loan debts, SOR ¶¶ 1.b and 1.c. These debts were paid, albeit through garnishment, between 2018 and 2020, and credit reports from 2021 submitted by both parties show no balance is due on either debt. AG ¶ 20(e) applies to these debts, which are both resolved.

This leaves SOR ¶ 1.a, a \$27,000 credit-card debt in collection. Applicant has an agreement to settle the account for \$14,000 over the next 12 months, and has begun making monthly payments.

AG ¶ 20(a) has some application because SOR ¶ 1.a is the only delinquent debt remaining (out of three in the SOR). Applicant's debt is therefore rather isolated. However, the debt remains ongoing, so AG ¶ 20(a) does not fully apply.

AG ¶ 20(b) also has some application, since Applicant's debts were due, in part, to his divorce. Applicant is also credited with the fact that he worked two jobs for several years to make ends meet.

AG ¶ 20(c) also applies. Applicant has participated in credit counseling, albeit during his marriage several years ago. He also keeps a budget. His debts are also under control. SOR ¶ 1.a is the only debt left in the SOR, and Applicant has an agreed-upon and reasonable plan in place to resolve it. He purchased two cars in 2020. Importantly, however, the credit reports establish that his payments remain current. His current credit reports also do not show any other delinquencies. Applicant's financial issues are being resolved and are under control. AG ¶ 20(c) applies.

AG ¶ 20(d) also has some application. SOR ¶¶ 1.b and 1.c were resolved through garnishment, a debt resolution mechanism that does not establish good-faith efforts by the applicant. However, Applicant's student loan debts were only briefly delinquent, and they were being resolved prior to issuance of the SOR – timing which weighs in his favor (as does the fact that the student loan debts show no balance owed). The timing of Applicant's efforts to resolve SOR ¶ 1.a is also a factor to be considered, as the settlement and his subsequent payments are both recent. However, there is no requirement that debts be paid off in any particular order, or that they be fully paid off, to establish mitigation. An applicant need only establish a reasonable plan to pay off his debts, and take some concrete steps towards execution of that plan through documented evidence of payments. Applicant has done this.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

- (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. In particular, I considered the strong character reference letter provided by the president and CEO of Applicant's employer, as well as Applicant's many years with a clearance, both in the Navy and the defense industry. I also considered the record evidence supporting a finding that Applicants' debts occurred, at least in part, after his divorce, and he worked multiple jobs to make ends meet. His current credit reports do not show that any other delinquent debts are evident. His debts are being resolved and are under control.

Overall, the record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant provided sufficient evidence to mitigate the financial security concerns.

### **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, 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.

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Braden M. Murphy  
Administrative Judge