



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-01312  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

09/07/2021

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. A Statement of Reasons (SOR) was issued under Guideline F, financial considerations, due to two delinquent debts that total in excess of \$33,000. His unsubstantiated reassurances that he would address the two delinquent debts were insufficient to mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 21, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF acted 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

In Applicant's undated answer to the SOR allegations he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 9, 2021, DOHA issued a Notice of DCS Video Teleconference Hearing scheduling a hearing that was conducted on June 16, 2021.

Six Government exhibits (Ex. 1 – 6) and six Applicant exhibits (Ex. A - F) were admitted into evidence without objection. The record was held open following the hearing to allow Applicant to submit additional documentation. On June 17, 2021, Applicant sent an email stating he intended to obtain information from the credit union. Neither information from the credit union nor any other additional documentation was received. Applicant testified at the hearing, as reflected in a transcript (Tr.) received on June 28, 2021.

### **Findings of Fact**

After a thorough review of the testimony, pleadings, and exhibits, I make the following findings of fact.

Applicant is 54 years old and is working as a subcontractor procurer for a defense contractor. He is seeking to maintain a clearance. He was married from December 1994 through September 2010. He pays \$1,000 a month child support for his two daughters ages 16 and 13. (Ex. D, Tr. 26) He is current on his support payments. He pays \$500 monthly for his children's schooling, which is his half of the monthly \$1,000 tuition. (Tr. 66) In the past two years, he paid \$4,000 for his oldest daughter's braces and pays \$137 monthly for his younger daughter's braces. (Tr. 66)

Applicant has a commendable military record. Applicant is a major (O-4) in the state Army National Guard as an assistant operations (ops) officer. (Tr. 19) He served on active duty from April 1990 through July 1993. He was deployed to Kuwait from June 2017 to March 2018. He was deployed to Iraq and also deployed to Afghanistan from March 2011 through April 2012. (Tr. 11, 19) In early 2021, he received his 20-year letter entitling him to an Army retirement at the appropriate time. (Tr. 65) From 1997 to 2000, he worked as a police officer. (Tr. 73) He has received a Bronze Star, two Army Commendation Medals, an Army Achievement Medal, an Afghanistan Campaign Medal with two campaign stars, an Iraq Campaign Medal with two campaign stars, a state Medal of Merit, a state Faithful Service Medal, and a state Federal Service Medal (2<sup>nd</sup> award), and various other awards and decorations. (Ex. E, Ex. F. Tr. 75-75)

Applicant had a one-year contract for employment with a company. He left that company in September 2016 and in October 2016 started pre-deployment training for the deployment to Kuwait. (Tr. 28) The pre-deployment amounted to approximately two weeks of pay per month. (Tr. 29)

Applicant worked for a DoD contractor from December 2004 to October 2012, at which time he was laid off. Prior to his deployment to Afghanistan he was working for his current employer. In April 2012, when he returned from the deployment he was again hired by his current employer. (Tr. 30) However, although rehired, he had no job, no desk, no computer just an empty cubicle. He was told he could be someone else's assistant, which was disappointing because he had eight years' experience doing the job. (Tr. 31) He brought his concerns to his senior manager, who was supportive, and told him the company had future plans for him.

From April 2012 to October 2012, Applicant worked for his current DoD contractor but lacked job satisfaction because he was assigned no duties and had nothing to do. (Tr. 33) He filed a complaint and his employer said they were giving him a paycheck and did not understand the problem. At that point, he left the company, which was called a voluntary layoff. (Tr. 33) He then attended a bartending academy and took some full-time and part-time jobs as a bartender. He had some full-time employment with the National Guard. He obtained some Active Duty Operational Support (ADOS) orders, which are special orders for tours lasting from six months to a year. (Tr. 38) From November 2012 through October 2016, he was an Operations Officer working at the National Guard Reserves Headquarters for an engineering brigade. (Tr. 39)

In June 2015, when there was no additional Guard duty available, Applicant obtained a full-time job that lasted three or four months. (Tr. 40) That job paid \$40,000 a year. At that time he received a subpoena for back child support. (Tr. 42) It was at this time he started using his credit cards for living expenses. From February 2016 to September 2016, he was hired by a company for a limited time contract. (Tr. 43)

Applicant was unemployed from 2013 to 2016. (Tr. 19) In May 2018, he returned to a position in the procurement of subcontractors with his previous DoD contractor. (Tr. 19, 26) In addition to his DoD contractor pay, he receives monthly pay for the National Guard time he performs. (Tr. 24)

Applicant had two charged-off debts: a \$25,777 credit union debt, which he admitted owing and a \$7,936 Ford Motor Credit Corporation (FMCC) debt due to a repossessed truck. (Ex. 4, Ex. 5, Ex. 6) He denied the FMCC debt in his SOR response. He disputes the amount the creditor says is owed following the repossession. (Tr. 54) The last payment he made on the credit union debt was in 2016 or 2017 when he deployed to Kuwait. (Tr. 47) These are the only two delinquent accounts he has. (Tr. 62)

Applicant listed both delinquent obligations when he completed his May 2017, Electronic Questionnaires for Investigations Processing. (Ex. 1) He was questioned about these debts during an October 2018 Enhanced Subject Interview. (Ex. 2) He stated he was making payment on his credit union debt as he was able. No documentation of any payment was provided during or after the hearing. In his May 2020 response to written interrogatories he indicated he had talked to the collection service for the credit union debt and informed them he would "coordinate a payback plan as soon as [he] had paid off other credit card debts." (Ex. 3) As of May 2020, his monthly net remainder (monthly income less monthly expenses and payments) was \$1,163. (Ex. 3)

In 2015 or 2016, Applicant started getting behind on his payments. In 2016, his car and his truck were repossessed, and he had to go to court due to unpaid child support. (Tr. 45, 47)

Applicant had two to three years when he was unemployed or underemployed following his time with a DoD contractor. The income during this time was less than he earned on military deployments. (Tr. 16) During this period, he was living off his credit cards and accumulated a good deal of debt. He used all available credit on the credit cards. (Tr. 23) In 2016, he had to use his credit card to pay a \$4,000 child support debt. (Tr. 17) On his May 2017 e-QIP he indicated he was \$7,000 behind on his child support payments for the period of January 2015 through July 2015. (Tr. 60) He has since brought his child support payments current. He stated:

I had to use credit cards to pay for rent, the auto loan, sometimes the groceries, utilities. Everything I could where I couldn't make up for it up with what I was earning. My paychecks I earned with other jobs were about half of what I was making. (Tr. 17, 44)

In addition to Applicant's credit union debt, he incurred an American Express card debt. He also had another bank credit card, which was locked in 2017 by the creditor for being behind on his payments. (Tr. 60) He believes he owes approximately \$2,400 on the bank credit card account down from a balance of \$9,000. (Ex. A, Ex. B, Tr. 23) For six months in 2018 and 2019, he made \$500 a month payments on this credit card debt. (Tr. 63) This bank credit card is the only card that he uses, but he is making payment on two other credit cards and intended to initiate a repayment plan on the credit union account. (Tr. 23, 25) He has approximately \$1,000 in his savings account and \$1,000 on his debit card. (Tr. 23) His bank account sometimes dips to \$1,000 and has recently been as high as \$5,000. (Tr. 67) The account balance varies depending on how much training he is doing with the National Guard.

In October 2014, Applicant leased for 36 months a 2013 F150 pickup truck when he returned from his deployment to Afghanistan. (Tr. 50) The original balance on the lease was \$19,183. (Ex. A, Ex. 4) His monthly truck payment was \$400. He was current on his monthly payment through March 2016. (Ex. A) He was unable to continue making his monthly payments, and in September 2016, the truck was repossessed after three months of nonpayment. (Ex. A, Tr. 53) He attempted to work with the Ford Motor Credit. He wanted to voluntarily return the vehicle and the creditor stated that if he did so it would still be considered a repossession, and he would be responsible for paying the balance on the loan. (Tr. 17) The truck was repossessed, sold, and Applicant was required to pay the creditor the balance owed on the truck. (Tr. 18)

Following the resale of the vehicle, Applicant received one or two letters demanding payment on the balance of the loan. He asserts he has not heard recently from Ford Motor Credit. (Tr. 54) He asserts he received no follow-up letters, no telephone calls, and no emails following the initial letters demanding payment. He has made no progress on the repossession debt and has had no contact with the creditor. (Tr. 18) He

intended to address his other debts before addressing the repossession debt. (Tr. 78) The truck repossession was the only vehicle repossession he has ever had. (Tr. 59)

At the hearing Applicant stated as to the vehicle repossession debt:

I have no idea what to do with [that]. I'll probably make, you know, take the initiative and contact Ford and see where it is and where they've rolled that debt off to or who's purchased that debt. I have no idea where that debt resides right now . . . and no one's ever contacted me about that the Ford Motor Credit debt since I bought it in 2016. (Tr. 24-25)

Applicant has been in contact with the credit union. He was deployed to Kuwait from June 2017 to 2018. After returning from deployment and returning to his work with the DoD contractor, he was in a position to stabilize his debt. (Tr. 18) The day before the hearing, he contacted the law firm collecting the credit card debt and asserted he has established a repayment plan. The plan requires him to pay \$100 per month, which he intends to raise to \$250 per month next year. (Tr. 18, 21)

Applicant acknowledged the credit union debt and stated:

I should have, admittedly, I admit, I should have approached and worked out something with the [ ] credit union earlier. I really didn't want to do it. I wanted to just table that. It wasn't going anywhere. We weren't making any contact but through phone and email and letters. (Tr. 24)

Applicant asserted he told the credit union that as soon as he had other debts paid off, he "would shift to that one." (Tr. 24) However, his intention was to simply let it sit. The debt was not going anywhere and he would "chip away at that when [he] could." (Tr. 24) He said he had maintained contact with the collection agency on behalf of the creditor reminding him about the debt. (Tr. 49) He received calls from the creditor concerning the debt following his deployment to Kuwait. (Tr. 49)

Applicant asserts he had good credit and timely paid his debts until his divorce and period of unemployment. The divorce required him to "take on a lot of additional debt when we split up." (Tr. 22)

## **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 must 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 overarching

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . 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.

Applicant provided no evidence substantiating that he was getting his finances under control, despite being questioned about these debts almost three years ago during an October 2018 Enhanced Subject Interview. Applicant has two delinquent debts that total more than \$33,000. He listed both delinquent obligations when he completed his May 2017 e-QIP. He has provided no documentation that he has contacted either of the debtors or made any payment to them.

Applicant stated he told the credit union that as soon as he had other debts paid off, he "would shift to that one." However, his intention was to simply let it sit. The debt was not going anywhere and he would "chip away at that when [he] could." He asserted he had maintained contact with the collection agency, but provided no documentation supporting this allegation.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts" and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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.

The Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board stated in ISCR Case No. 17-00263 (App. Bd. Dec. 19, 2018) that "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." No payments on the debts or a plan of debt repayment has been presented.

"[I]t is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts." ISCR Case No. 16-02912 at 3 (App. Bd. Apr. 6, 2018) (citing ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016)). "This implies something that independently substantiates the resolution of debts." ISCR Case No. 17-03462 at 5 n.7 (App. Bd. Dec. 18, 2018)

Applicant stated he incurred more credit card debt than he could handle. He made the decision to put off paying those debts until he could pay off other debts that he considered to be priorities. The great majority of his credit history shows good credit. He asserts he will pay the two debts. He has 25 years of Army service. He admits making bad decisions as far as his debts, but will make every effort to pay them. However, he provided no documentation showing what payment efforts he has made.

Although there are only two delinquent accounts, which makes the behavior infrequent, the debts remain unpaid and therefore cast doubt on Applicant's current reliability, trustworthiness, or good judgment. The debts are considered recent because



“an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not apply.

The conditions in AG ¶ 20(b) are only minimally applicable. Applicant said his September 2010 divorce required him to “take on a lot of additional debt.” However, that event was approximately 11 years ago. He has suffered periods of unemployment and underemployment. In April 2012, when he returned from the deployment he was again hired by his current employer. Although rehired, he had no job, no desk, no computer, and simply an empty cubicle. He was receiving a paycheck and his senior manager told him the company had future plans for him. However, a lack of job satisfaction resulted in his decision to leave the company. He then obtained some full-time and part-time jobs as a bartender, and had periods of full-time employment with the National Guard. Voluntarily leaving a job, even due to lack of job satisfaction, is not an event largely beyond his control.

AG ¶ 20(c) does not apply because there has been no showing Applicant has received financial counseling and there are no clear indications that the problem is being resolved or is under control. AG ¶ 20(d) does not apply because he has not initiated and is not adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is not paying the vehicle repossession debt because he thinks it is unfair. He is upset because he could not voluntarily return the vehicle and owe no additional amounts on the loan. He has done nothing to address this debt. AG ¶ 20(e) does not apply because, in addition to a reasonable basis to dispute the legitimacy of the past-due debt, there must be documented proof to substantiate the basis of the dispute, or he must provide evidence of actions to resolve the issue. He has failed to provide any documentation. Under these circumstances, none of the mitigating conditions 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 common-sense 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. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment. I considered the whole-person concept factors in my evaluation of the disqualifying and the mitigating conditions of the guidelines, and they do not warrant a favorable conclusion.

Applicant's military career with the state Army National Guard is commendable. Government acknowledges he has been a great citizen with his National Guard service, but stated it was how he handled the two debts, which are relatively large, that poses the security concern. It has been almost three years since he was questioned about these two delinquent debts in October 2019. Since that time there is no track record of payments being made on either of the debts. His claim that he will contact the collection agency to arrange an agreement for the credit union debt is too speculative to establish mitigation of the two debts.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid, it is whether Applicant's financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Overall, the record evidence leaves me without questions or doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

The decision to deny a clearance at this time should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance in the future. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not warranted, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, he may well demonstrate persuasive evidence of his security worthiness. Favorable consideration should be given after he meaningfully addresses the two delinquent debts. However, a clearance at this time is not warranted.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a and 1.b:      Against 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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CLAUDE R. HEINY II  
Administrative Judge