



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



In the matter of: )  
)  
) ISCR Case No. 19-03839  
)  
Applicant for Security Clearance )

**Appearances**

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

09/20/2021

**Decision**

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Applicant did not act responsibly with respect to his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 25, 2018, Applicant completed and signed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On March 20, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (HE 2) Applicant provided an undated response to the SOR and requested a hearing. (HE 3)

On October 22, 2020, Department Counsel was ready to proceed. Processing of the case was delayed due to COVID-19. On July 12, 2021, the case was assigned to me. On July 23, 2021, DOHA issued a notice of hearing, setting the hearing for July 30, 2021. (Hearing Exhibit (HE) 1) Applicant waived his right under the Directive to 15 days of notice of the date, time, and location of the hearing. (Transcript (Tr.) 11) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the U.S. Cyber Command video teleconference system. (*Id.*)

During the hearing, Department Counsel offered nine exhibits. (Government Exhibits (GE) 1-GE 9) Applicant did not offer any exhibits. There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 15-17; GE 1-GE 9)

On August 11, 2021, DOHA received a transcript of the hearing. The record closed on September 15, 2021. (Tr. 10, 43, 45; HE 2) No documents were received after Applicant's hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://doha.ogc.osd.mil/>.

### **Findings of Fact**

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d through 1.g, and 1.i. He denied the allegations in SOR ¶¶ 1.c, 1.h, 1.i, 1.j, and 1.k. (HE 3) He also provided mitigating information. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 32-year-old former employee of a DOD contractor, and he has been employed in information technology support for about 15 years. (Tr. 6-7) From April to June 2021, he was unemployed, and he is currently a benefits coordinator for an insurance company. (Tr. 19, 39-40) He is sponsored for a security clearance. (Tr. 19-20)

In 2007, Applicant graduated from high school. (Tr. 6) He completed three years of college. (Tr. 7, 20-21) He has not served in the military. (Tr. 7) He has never married, and he does not have any children. (Tr. 7)

### **Financial Considerations**

Applicant was unemployed in 2015 or 2016 for about six months. (Tr. 40) In 2017, he was unemployed for about three months. (Tr. 40) He said that the source of his financial problems was insufficient income. The SOR alleges financial consideration

security concerns based on 12 delinquent debts totaling \$86,835. The status of each allegation is as follows.

SOR ¶ 1.a alleges a \$69,383 delinquent federal student loan. Applicant attended a university from 2007 to 2011. (Tr. 20) He received some student-loan deferments from 2011 to 2017 due to lack of income. (Tr. 23) He did not provide copies of his requests for student-loan deferments. In 2014, he made six payments totaling about \$250. (GE 8) In 2015, he made four payments totaling \$220. (*Id.*) He said he made some payments in 2017, became unemployed, and stopped making payments; however, no payments are shown in 2017 on his student-loan account statement. (Tr. 22; GE 8) In July 2018, he started a loan rehabilitation program in which he agreed to pay \$123 monthly for nine months. (Tr. 24) He made eight \$123 payments, there was a five-month gap without payments, and then he made a \$175 payment on April 17, 2020. (Tr. 24-25) On March 21, 2021, his consolidated student-loan account was transferred, and he was supposed to receive a new payment schedule; however, it had not arrived by the date of his hearing. (Tr. 27; GE 9) According to his July 28, 2021 credit report, Applicant currently owes about \$107,000 in student loans. (Tr. 22, 26; GE 6) According to his March 21, 2021 student-loan account statement, his student loan balance is \$177,340. (GE 8) For purposes of this decision, I have indicated the current student-loan balance is \$107,000.

SOR ¶ 1.b alleges a delinquent student loan owed to a university for \$1,510. Applicant's August 30, 2019 credit report shows the debt was first listed in January 2017. (GE 4) He enrolled in a university and received a laptop computer; however, after about two months, he stopped attending classes. (Tr. 28) Applicant said he returned the laptop computer; however, the university said they did not receive it. (Tr. 29) Applicant disputes his responsibility for the debt. (Tr. 29) He had some emails about the dispute that he intended to provide for inclusion in the record; however, they were not received. (Tr. 29) The debt is not listed on his July 28, 2021 credit report. (GE 6) I have credited him with successfully disputing the debt.

SOR ¶ 1.c alleges an insurance debt placed for collection for \$796. Applicant made two \$50 payments, and his credit report shows a balance of \$696. (Tr. 30) He indicated he would check into the debt. (Tr. 30)

SOR ¶¶ 1.d, 1.e, 1.g, 1.k, and 1.l allege five medical debts placed for collection or 120 days past due for \$147, \$145, \$773, \$787, and \$1,183. Applicant said he paid the debts in SOR ¶¶ 1.d and 1.e, and his July 28, 2021 credit report shows the debt in SOR ¶ 1.e (\$145) as paid. (Tr. 31; GE 6) The debt for \$773 may have been incorrectly billed, and Applicant said he would check on the amount owed. (Tr. 34) In 2018, he said he intended to make payment arrangements for the \$787 debt. (GE 1) He said he paid the \$1,183 debt, and he would provide proof of payment after his hearing. (Tr. 36) He did not provide any documentation concerning the five medical debts.

SOR ¶ 1.f alleges a student loan debt placed for collection owed to a technical institute for \$6,924. Applicant completed the one-year technical-institute course. (Tr. 31) Around October 2020, Applicant set up an automatic payment plan from a credit card. (Tr. 33) Applicant said he made about two \$100 payments to address the debt. (Tr. 32)

He said he would check on the account. (Tr. 33) He did not provide documentary evidence of the two \$100 payments or showing his payment arrangements.

SOR ¶¶ 1.h and 1.j allege telecommunication debts placed for collection for \$1,966 and \$1,436. Applicant said the debts involved changing cell-phone plans, and he disputed his responsibility for the two debts. (Tr. 35-36) He did not provide correspondence to or from the creditors about the disputes. In his April 25, 2018 SCA, Applicant disclosed the debts in SOR ¶¶ 1.h and 1.j. (GE 1) He indicated the debts became delinquent in 2010 to 2011. (*Id.*) He said that the debts are in collections, are disputed, and should have fallen off of his credit report. (*Id.*) His July 28, 2021 credit report does not list these three accounts. I have credited him with successfully disputing these two debts.

SOR ¶ 1.i alleges a debt owed to a landlord placed for collection for \$1,785. Applicant's roommate moved out, and he could not afford the rent by himself. (Tr. 36) He believed he should not be responsible for the remainder of the debt. (Tr. 36) In his April 25, 2018 SCA, Applicant disclosed the debt in SOR ¶ 1.i. (GE 1) He indicated this debt became delinquent in 2010 or 2011. (*Id.*) He said that the debts are in collections, are disputed, and should have fallen off of his credit report. (*Id.*) His July 28, 2021 credit report does not list this debt. I have credited him with successfully disputing this debt.

Applicant's net monthly pay is about \$3,000, and it varies based on commissions. (Tr. 38) His monthly expenses include rent of \$1,650 and a \$594 car payment. (Tr. 38) His monthly remainder sometimes is about \$200. (Tr. 39) He has not had financial counseling. (Tr. 39)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **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.

A debt that became delinquent several years ago is still 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 ¶ 19 includes 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." The record establishes AG ¶¶ 19(a) and 19(c). Further discussion of the disqualifying conditions is in the mitigation section, *infra*.

AG ¶ 20 lists financial considerations mitigating conditions which may be 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

The SOR alleges 12 delinquent debts totaling \$86,835. In the last 10 years, Applicant paid about \$2,000 to address his student loan debts. According to credit reports, his student loan debts in SOR ¶¶ 1.a and 1.f now total about \$114,000. He did not provide proof of any payments to any of the SOR creditors except for the account statement pertaining to SOR ¶ 1.a.

Several of Applicant's delinquent debts have been either charged off or dropped from his credit report. When a debt is dropped off of a credit report, it does not necessarily establish mitigation of the debt. The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe debts are not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off.

In his April 25, 2018 SCA, Applicant disclosed the debts in SOR ¶ 1.h (\$1,996), 1.i (\$1,785), and 1.j (\$1,436). The debts resulted from transfers of cell phone accounts and his inability to pay rent after his roommate moved. He indicated the debts became delinquent in 2010 to 2011. He said that the debts were disputed, and his July 28, 2021 credit report does not list these three accounts. I have credited Applicant with mitigating the debts in SOR ¶¶ 1.h, 1.i, and 1.j because the likely resolution is the creditors elected not to pursue collection. Similarly, he said he disputed the debt owed to the university for \$1,510, and it has been removed from his credit report. I have credited him with mitigation of the debt in SOR ¶ 1.b. I have credited Applicant with mitigating SOR ¶ 1.e, a medical debt for \$145, because his July 28, 2021 credit report showed the debt was paid.

As to the seven remaining SOR debts, Applicant did not provide documentation such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the

creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve a debt; or (5) other evidence of progress or resolution.

In order for Applicant to qualify for mitigation under the “good faith” mitigating condition, he must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving his debts. The concept of good faith requires him to establish that he acted in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. He did not provide documented proof of the basis of the disputes or actions to resolve the issue, except for SOR ¶ 1.a. AG ¶ 20(d) is not fully applicable with respect to any of the debts discussed in the facts.

Applicant’s unemployment and underemployment reduced his ability to pay his debts; however, he did not act responsibly under the circumstances. He did not provide documentation showing that he maintained contact with his creditors and attempted to establish payment plans. He failed to make sufficient progress resolving his delinquent debts. He did not show he made responsible, prudent, and good-faith financial decisions. Delinquent debts are likely to remain unresolved. He failed to establish mitigation of financial considerations security concerns.

### **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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 32-year-old former employee of a DOD contractor. He has been employed in information technology support for about 15 years. From April to June 2021,



he was unemployed, and he is currently a benefits coordinator for an insurance company. He completed three years of college.

Applicant owes seven delinquent SOR debts totaling about \$117,600. He made about \$2,000 in payments to address his student loans over the past 10 years. He paid a medical debt for \$145. Four SOR debts were successfully disputed. He did not establish a track record of debt payments for seven SOR debts. He did not provide documentation showing that he took reasonable, prudent, and good-faith actions to communicate with his creditors and to establish payment plans. He did not meet his burden of proving he is financially responsible.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Unmitigated financial considerations security concerns relating to his handling of his delinquent debts lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

### 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraphs 1.h, 1.i, and 1.j:	For Applicant
Subparagraphs 1.k and 1.l:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge