



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



In the matter of: )  
)  
) ISCR Case No. 20-01390  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

September 27, 2021

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is denied.

**Statement of the Case**

On November 14, 2018, Applicant filed a security clearance application (SCA). On November 4, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

Applicant responded to the SOR (Answer). He requested a hearing before an Administrative Judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel amended the SOR on March 11, 2021, adding one additional allegation. Applicant responded to the amendment (Answer to Amendment). On May 12, 2021, the case was assigned to me. DOHA issued a notice on July 19, 2021, scheduling the hearing for August 10, 2021.

I convened the hearing as scheduled. Department Counsel presented Government Exhibits (GE) 1 through 5, all of which were admitted without objection. Applicant offered three exhibits at the hearing, which I marked as Applicant Exhibits (AE) A through C. His exhibits were also admitted without objection. (Hearing Transcript at 15-23.)

I kept the record open until August 24, 2021, to give Applicant the opportunity to supplement the record. He timely submitted three additional documents, which I marked as AE D through F and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on August 16, 2021. (Tr. at 73.)

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 56 years old and has worked for a defense contractor as an assembler since August 2018. He married in 2002 and divorced in 2007. He has two adult children, ages 29 and 32. He earned a high school diploma and has taken some college and technical school courses. (Tr. at 29.)

From 2007 until 2018, Applicant was self-employed as a delivery driver contractor, driving hundreds of miles every day. He lost his delivery contract twice, once in 2010 and again in 2015 or 2016. From about 2016 to 2018, he was unemployed and experienced serious financial difficulties. Since becoming employed full time as a W-2 employee, he has been able to stabilize his financial situation. He also works part time in another field as a 1099 employee to make a little extra income. He is a first-time applicant for a security clearance. (Tr. at 31-37, 49-50, 68-69.)

### **SOR Allegations**

Paragraph 1, Guideline F - The SOR sets forth seven allegations regarding Applicant's failures to pay his federal tax liabilities, one delinquent education loan, and five past-due consumer debts. The SOR Amendment adds an eighth allegation regarding an additional tax year (TY) with a federal tax liability.

The details regarding each SOR allegation are as follows:

**1.a Failure to pay federal income taxes in the amount of about \$1,206** – The SOR alleges that Applicant owes delinquent taxes to the IRS in the amount of \$1,206 for TYs 2012-2017. In his Answer, Applicant denied this allegation and wrote that he paid off the tax debts for the years 2012-2016 through a payment plan ending in November 2018. After the hearing, Applicant provided an IRS Account Summary, dated August 16, 2021, reflecting a zero balance on his taxes for TYs 2011-2020. These tax debts have been resolved. (Answer; AE F.)

**1.b Car loan charged off in the amount of about \$5,937** – Applicant denied this debt in his Answer. He wrote that the lender involuntarily repossessed his car and resold it. He disputes the amount the lender claims is owed. He testified that this amount is what he owed the lender when it repossessed the car in 2015 after he defaulted on paying the loan. He argues that he should only owe the loan balance after the resale of the car. This account was opened in 2010, and he paid the loan for about five years. He tried to settle the debt with an installment payment plan, but the lender refused. The lender would only accept a lump-sum payment of the debt, which Applicant could not afford. Applicant described the current status of this debt as in “limbo.” This debt is not resolved. (Answer; Tr. at 38-41; GE 4 at 1-2; GE 5 at 4.)

**1.c Collection account in the amount of about \$3,320** – Applicant denied this debt in his Answer. He wrote that he attempted to enter into a payment plan with the collection agency, but his offer was rejected. The creditor insists on a lump-sum payment in full. The debt is a “pay-day” loan, which Applicant opened in 2016 in the amount of \$3,400 during his period of “hardship” without a contract, and he could not afford to repay the loan. At the hearing, Applicant testified that he did not believe he had made any payments on this debt. He was mistaken at that time. One of his post-hearing exhibits lists payments in a total amount of \$1,501, or almost one-half of this debt. This debt is partially resolved. (Answer; Tr. at 41-44; AE D; GE 3 at 1; GE 4 at 2; GE 5 at 4.)

**1.d Education loan in default in the amount of about \$2,228** – This loan was opened in about 2010, and Applicant defaulted on its repayment in about 2014. In his Answer, Applicant denied this debt. He wrote that the loan was for his daughter’s education in a technical school. She never was able to graduate because of fraud on the part of the school. He wrote further that his daughter has been advised that neither she nor Applicant as the co-signer on the loan have to repay this student loan because of the school’s fraud. He believes that the school was sued for fraud and the settlement relieved all students with education loans paid to the school of any responsibility to repay the loans, even if the loans had been assigned to the U.S. Department of Education (DOE) for collection. Applicant has no documentation to support his understanding on the current status of this loan. His child is presently homeless and has no documentation regarding the loan. The debt remains on Applicant’s most recent credit report in the record, dated March 11, 2021. This debt is not resolved. (Answer; Tr. at 44-47; GE 3 at 2; GE 4 at 2; GE 5 at 5.)

**1.e Collection account in the amount of about \$1,071** – This debt is owed to a cellphone service provider. Applicant defaulted on the monthly payments in about 2015 or 2016. In his Answer, Applicant denied the debt and wrote that he contacted the creditor and offered to repay the debt in installments. He was refused because the creditor insisted on being paid one-lump sum. The creditor was willing to accept a lump-sum payment for less than the full amount, but Applicant could not afford to pay the reduced amount. This debt is not resolved. (Answer; Tr. at 48-50; GE 4 at 2.)

**1.f Charged-off account in the amount of about \$444** – Applicant admitted this debt in his Answer and commented that he has been unable to repay this debt due to his limited income. This account is another “pay-day” loan. In October 2015, Applicant borrowed \$600 to pay for his living expenses when he was unemployed. AE A lists six payments totaling about \$1,690. Most of these payments were for interest or other charges and were made in 2015 and 2016. Applicant still has a balance to pay. This debt is not resolved. (Answer; Tr at 50-57; GE 3 at 3; GE 4 at 2; GE 5 at 5.)

**1.g Collection account in the amount of about \$559** – Applicant opened this account with an internet/cable TV provider. The creditor claims he did not return the company’s equipment. He admitted the debt in his Answer and wrote that he has been unable to pay this debt due to his limited income. At the hearing, he testified that he had returned the equipment when he moved and discontinued the service. He also testified that the debt included the last month of service by the provider. He has not contacted the creditor to settle this account. This debt is not resolved. (Answer; Tr at 57-59; GE 5 at 8.)

**1.h Failure to pay Federal taxes for TY 2019 in the amount of about \$1,066** – Applicant admitted this debt in his Answer to Amendment and noted that he entered into an installment agreement with the IRS in October 2020 to pay this tax debt. He submitted a document with his 2019 IRS statement, reflecting a balance of \$333.14 for TY 2019. Applicant has also filed his 2020 federal tax return, and his TY 2020 tax is fully paid. As noted above, he submitted after the hearing an updated IRS Account Summary, which reflects that he has a zero balance for TYs 2011-2020. Applicant has resolved his TY 2019 tax debt. (Amendment to Answer at 1, 3-4; AE E; AE F.)

Applicant’s employer does not offer financial counseling to its employees, and Applicant has not received any counseling. He was raised in a “financially-disabled home” and has never had the opportunity to be educated in financial matters. He merely lives paycheck to paycheck. He has considered the possibility of working with debt-consolidation or credit-repair companies. He has decided, however, that it would be better to try to make installment payment plans directly with his creditors. He wants to purchase a home, and he knows he needs to fix his credit to be able to do that. He is afraid that if he consolidates his debts or files for bankruptcy, he will not be able to qualify for a mortgage to buy a home. Even though he has some unresolved debts, he believes he is an honest person who tries to do the right thing. (Tr. at 50, 59-62, 74.)

Applicant’s current monthly take-home pay is about \$2,800. He shares his living expenses equally with his girlfriend/cohabitant. Their rent is \$2,300. His girlfriend has

three children who live with them. His monthly car payment is \$325. The car is almost paid off. He does not provide any support for his adult children. He has about \$600 left over every month after all of his basic living expenses. He has no savings. He believes he can resolve all of his outstanding debts if he was given the opportunity to make monthly payments. (Tr. at 61-67.)

## Policies

“[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 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.

Adverse clearance determinations must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

## Analysis

### Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The Government's evidence listing six delinquent consumer debts and two Federal tax debts establish the following conditions under AG ¶ 19 that could be disqualifying:

(a): inability to satisfy debts;

(c): a history of not meeting financial obligations; and

(d): failure to file or fraudulently filing annual Federal, state, or local. Income tax returns or failure to pay annual Federal, state, or local income tax as required.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Six of these mitigating conditions have possible applicability to the facts of 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;

(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 taken to resolve the issue; and

(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's debts are numerous and, for the most part, they remain unresolved. In the absence of a track record of actions taken to resolve his debts, his behavior casts doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is only partially established. Applicant's financial problems arose largely due to his loss of income and unemployment in 2015 and 2016 when he lost his delivery contract. His unemployment continued until he found new employment in 2018. He acted responsibly by setting up a payment plan to pay his past-due Federal taxes and has resolved his tax delinquencies. He has not, however, acted responsibly with respect to his six other delinquent debts. Even if he is correct that his creditors would not allow him to repay his debts in monthly installments, he could have acted responsibly by paying each debt in sequence with monthly savings and a lump-sum payment. He did not act responsibly by failing to repay any of these debts over the last three years.

AG ¶ 20(c) is not established. Applicant has not sought any financial counseling. He was able to resolve his federal tax debts on his own because he was able to file his tax returns and to set up installment payment plans with help from the IRS and its self-help technology. The same was not true with his consumer debts. Given his lack of training in financial matters when he was young, he needed professional help to assist him in navigating the difficult waters of pay-day loans as well as post-repossession car loans and student loans that are in dispute. He was stymied into non-action when told he had to make lump-sum payments to resolve debts. He needed counseling to help him resolve these debts and he did not seek it.

AG ¶ 20(d) is only partially established. Applicant initiated a good-faith effort to repay his delinquent federal taxes and has fully paid all of his past-due taxes up until TY 2020. He has also made payments on the pay-day loan that is the subject of SOR ¶ 1.c. He has not otherwise made a good-faith effort to repay the other debts listed in the SOR.

AG ¶ 20(e) is not established. Applicant has not provided evidence to substantiate that he has a reasonable basis to dispute the amount he owes the lender on the repossessed car, or the specific nature of the fraud giving rise to a dispute with his child's school. He claims that there has been litigation involving the claim of fraud by the school, but again he provided no details or documentation. His daughter's homelessness presents an obvious problem with respect to Applicant producing documentation about these issues. However, he was a co-signer on the student loan and should have been contacted about the litigation and any resolution. Also, he did not contact DOE to determine his obligations on the loan under the circumstances. He has not taken reasonable actions to try to resolve either the disputed car loan or the disputed student loan.

AG 20(g) is established. Applicant has documented that he has paid all past-due taxes in a reasonable and responsible manner.

### **Whole-Person Analysis**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's financial hardship while unemployed from 2015 or 2016 to 2018, and his lack of sophisticated financial training and skills to deal with the debts that arose during this period of hardship. I have also considered the positive steps he has taken to address his past-due taxes and the difficulties he experienced trying to negotiate installment payment plans with his other creditors. He has simply not taken sufficient positive steps, however, to mitigate the security concerns raised by his delinquent debts, starting with seeking help from others with more experience in financial matters and debt-resolution options.

Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial considerations.

### **Formal Findings**

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

John Bayard Glendon  
Administrative Judge