



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-02567  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2021

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 2, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on January 28, 2021, and requested a hearing before an administrative judge.

The case was assigned to me on June 15, 2021. The hearing was convened as scheduled on August 12, 2021. Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was left open for Applicant to submit additional documentary evidence. He submitted documents that I have marked AE D through O and admitted into evidence.

## Findings of Fact

Applicant is a 63-year-old employee of a defense contractor. He has worked for his current employer or a predecessor contractor since August 2016. A supervisor described him as “efficient, detail-oriented, and extremely competent and reliable.” He served in the U.S Navy Reserve from 1976 until he was honorably discharged in 1980. He has a General Educational Development (GED) high school equivalency diploma and some college credits. He is married for the second time. He has one child. (Transcript (Tr.) at 23-24; GE 1, 6; AE N, O)

Applicant worked for defense contractors for years, working mostly overseas until he was laid off in late 2012. He was out of work for about five to six months in 2013. He bought a business for \$670,000. He made a down payment of \$225,000, which he withdrew from his 401(k) retirement account, and then he was supposed to make monthly \$8,000 payments until the remaining \$445,000 was paid. (Tr. at 17-18, 26-29; Applicant’s response to SOR; GE 1, 6)

The business was not as successful as Applicant was led to believe. He renegotiated the sales contract with the previous owner for another \$200,000 lump-sum payment in 2014 and a final \$25,000 payment in 2015. Applicant made the \$200,000 payment, which he again withdrew from his 401(k) retirement account. (Tr. at 18; Applicant’s response to SOR; GE 6)

Applicant discovered the previous owner was doing business under a name that was similar to Applicant’s business in violation of a non-compete clause in the sales contract. Applicant believes that his salesman conspired with the previous owner to significantly underbid contracts, which left Applicant’s business losing about \$10,000 to \$12,000 per month. Applicant used his personal credit to pay the company’s bills. The business was ultimately unsuccessful, and Applicant closed it in 2015. (Tr. at 17-18, 21; Applicant’s response to SOR; GE 6)

The previous owner sued Applicant for the remaining money owed on the sales contract, and Applicant countersued for breach of contract. In January 2020, the court dismissed Applicant’s countersuit for violating the court’s discovery order. Applicant testified that the lawsuit is still pending. (Tr. at 19, 54; Applicant’s response to SOR; GE 9)

Applicant filed a Chapter 7 bankruptcy case in March 2016. The case was closed in August 2016. He stated that his bankruptcy attorney made mistakes in how the bankruptcy was filed. Applicant filed another Chapter 7 bankruptcy case in January 2017. Under Schedule D, Creditors Who Have Claims Secured by Property, the petition listed claims totaling \$319,000, which included three mortgage loans totaling \$240,000; a \$39,000 auto loan; and \$40,000 owed on a boat valued at \$107,600. Under Schedule E/F, Creditors Who Have Unsecured Claims, the petition listed \$30,000 in taxes as priority claims and \$202,326 in nonpriority claims. Applicant’s attorney filed a motion to convert the case to a Chapter 13 bankruptcy. The former owner of the business, as a creditor, objected to the motion. After additional motions and filings, the case was never

converted and the bankruptcy was dismissed in May 2018. Applicant stated that the bankruptcy was dismissed because his income was higher than permitted for a Chapter 7 bankruptcy. (Tr. at 18-20, 40-42, 44-49; Applicant's response to SOR; GE 7, 8)

Applicant sold the boat in 2015. The loan was still reported in the bankruptcy because Applicant carried the loan until the purchaser paid off the boat. Applicant's taxes have been paid. (Tr. at 30, 49-52; AE I, M; GE 6)

The SOR alleges the two bankruptcy cases, an unpaid \$962 judgment, and six delinquent debts totaling about \$73,800. The \$962 judgment was against Applicant personally and a company operating under the name of Applicant's business. It is unclear if the co-defendant was Applicant's company, the company before it was purchased by Applicant, or the company operated by the previous owner with the same or similar name after the original business was sold. Applicant denied the allegations, claiming that the debts were incurred for his company. He admitted that he was at least a cosigner for the debts. The judgment is established by a court record. The debts are established by credit reports and Applicant's admissions. The credit reports list the SOR debts as individual accounts. (Tr. at 19-21, 32-33, 38-39; Applicant's response to SOR; GE 2-6)

Applicant reached a settlement agreement with the creditor for the SOR ¶ 1.f debt in April 2021. It is alleged as a charged-off debt of \$15,571, but the actual balance was \$22,461. Applicant agreed to pay \$655 per month for 12 months for a total of \$7,861 in settlement of the debt. He documented the four required payments from May 2021 through August 2021. (Tr. at 36-37; Applicant's response to SOR; GE 2-5; AE A, B, G)

In March 2021, Applicant received a settlement offer from a creditor for a past-due \$2,797 debt that was not alleged in the SOR. He paid \$1,160 to settle the debt in May 2021. (Tr. at 43-44; AE C, H)

Applicant has been steadily employed by defense contractors since December 2015. He stated that his finances were good before he bought the business, and he has paid his current bills since he closed the business. He has taken financial courses online. He maintains a budget. He is working overseas and making a good salary. He has not made any other payments toward his delinquent debts. He stated that he contacted the creditors after his bankruptcy was dismissed. Some of the creditors told him the debts were old and charged off and they were no longer collecting them. Other creditors wanted a lump-sum payment or more than he could afford in monthly payments. He stated that he planned to pay the creditors who are willing to talk to him one at a time until they are paid. (Tr. at 20-22, 30-31, 39, 52-55, 67-68; Applicant's response to SOR; AE D-F, J-L)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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 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 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern 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.

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

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

Applicant has a history of financial problems, including bankruptcy cases and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's finances were stable before he was laid off in late 2012. He decided his best option was to buy a business. He attributed the failure of the business to the actions of the former owner. He used his personal credit to pay the company's bills. I find that Applicant's financial problems and delinquent debts resulted from the failure of his business, which was largely beyond his control.

The real question in this case is whether Applicant acted responsibly under the circumstances. In light of Applicant's catastrophic business failure, filing bankruptcy does not constitute irresponsible behavior. Had he been successful in having his debts discharged or if he was currently in the midst of a Chapter 13 bankruptcy case where he was paying his debts under the supervision of the bankruptcy court, I would have found everything to be mitigated. Under the circumstances, I do not find the two Chapter 7 bankruptcy cases, as alleged in SOR ¶¶ 1.h and 1.i, to be disqualifying. SOR ¶¶ 1.h and 1.i are concluded for Applicant. However, because the cases were dismissed, they also do not provide any significant mitigation.

The Chapter 7 bankruptcy case was dismissed in May 2018, more than three years ago. Applicant did nothing to pay his debts until March 2021, after he received the SOR. I also considered Applicant's response to the SOR in which he denied the allegations and stated that the debts were made for his company. It does not appear that he had any intention to resolve his debts until he received the SOR. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Counting the settlement payment for the non-alleged debt, Applicant has paid a total of \$3,781 towards his debts. I do not expect that he could have paid all or even most of his debts, but I believe he could have paid more. He stated that he intends to pay the creditors who are willing to talk to him one at a time until they are paid. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

## 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(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service, work overseas for defense contractors, and favorable character evidence. However, those positive factors are insufficient to overcome Applicant's financial problems.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant

## Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge