



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



In the matter of: )  
)  
) ISCR Case No. 19-03387  
)  
Applicant for Security Clearance )

**Appearances**

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

10/15/2021

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant admitted responsibility for seven delinquent medical debts totaling \$22,823. He paid \$617 to address the seven debts from April to September 2021. He did not provide enough evidence of progress on these delinquent medical debts. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 27, 2018, Applicant completed and signed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On February 13, 2020, the Defense Counterintelligence and Security Agency 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 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) On March 28, 2020, Applicant provided a response to the SOR and requested a hearing. (HE 3)

On July 30, 2020, Department Counsel was ready to proceed. Processing of Applicant's case was delayed due to the COVID-19 pandemic. On July 21, 2021, his case was assigned to me. On July 26, 2021, DOHA issued a notice of hearing, setting his hearing for August 24, 2021. (HE 1) 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 six exhibits. (Transcript (Tr.) 13-15; GE 1-6) Applicant offered one exhibit. (Tr. 9, 15; Applicant Exhibit (AE) A) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 16; GE 1-6; AE A) On September 1, 2021, DOHA received a transcript of the hearing. The record was scheduled to close on September 24, 2021. (Tr. 58) Receipt of Applicant's documents was delayed because of the change in e-mail systems at DOHA. On October 12, 2021, Applicant provided five exhibits, which were accepted into evidence. (AE B-AE F)

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 website [https://doha.osd.mil/Doha/doha\\_sys.aspx](https://doha.osd.mil/Doha/doha_sys.aspx).

### **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.g with explanations. (HE 3) Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 30 years old, and he has been employed in electrical design for fleet sustainment since 2017. (Tr. 6-7) In 2008, he graduated from high school. (Tr. 6) In 2018, he was awarded an associate's degree in 3D drafting and design. (Tr. 6-7) He has not served in the military. (Tr. 7) In 2011, he married, and his two children are ages three and five. (Tr. 17-18) His spouse is currently employed as a pharmacy technician. (Tr. 18) She is paid \$15 an hour and works 33 to 38 hours a week. (Tr. 47) His mother, who is on disability, lives in his home. (Tr. 40) There is no evidence that Applicant violated his employer's rules, committed criminal conduct, used illegal drugs, or abused alcohol. (GE 1; GE 2)

### **Financial Considerations**

Applicant's spouse was unemployed from December 2017 to December 2020. (Tr. 18-19) Applicant had medical issues in 2011 and 2013. In 2011, he had surgery and was hospitalized for four days. (Tr. 21-22) He had health insurance in 2011, and his medical debts in the SOR are not from his surgery in 2011. (Tr. 22) In 2011, he lost his employment at a call center due to medical issues, and he was unemployed for about four months.

(Tr. 22, 25) For several years after 2011, he was underemployed in minimum wage jobs.  
(Tr. 26)

SOR ¶¶ 1.a through 1.g allege that Applicant had seven delinquent medical debts totaling \$22,823 for the following amounts: \$8,421; \$517; \$151; \$3,477; \$1,382; \$4,844; and \$4,031. (HE 2) His debts resulted from medical treatments at the same hospital's emergency room. He received medical tests, such as CAT scans, MRIs, X-rays, and an endoscopy. (Tr. 20, 23) In 2015 or 2016, Applicant borrowed \$5,000 and used the funds to pay some of medical debts which were not listed on the SOR. (Tr. 28, 30, 49) He paid the debts when the creditors said they would take him to court. (Tr. 30) He repaid the \$5,000 loan. (Tr. 49) After Applicant received the SOR, he contacted the medical entity and he learned there were 14 medical debts, and he also learned the total owed was \$30,461. (AE B) The creditor offered to settle the debt for \$6,692. (Tr. 27; AE B) The debts were accumulated from August 19, 2010 (\$6,649), to January 29, 2019 (\$103). He indicated he made five payments totaling \$617 toward five of the medical debts for \$276, \$40, \$95, \$103, and \$103. (AE B) The \$276 payment matches the \$1,382 debt in SOR ¶ 1.e, and he is credited with mitigating this debt. The other four paid debts he paid are not listed on the SOR. He provided receipts showing three payments totaling \$534 as follows: April 11, 2021 (\$135); August 12, 2021 (\$296); and September 9, 2021 (\$103). (AE C) Presumably the \$534 total is included in the \$617 amount. He indicated at his hearing the medical debt was now \$6,396. (Tr. 27, 29) Most of his delinquent medical debts have been dropped from his current credit report. (GE 6)

When the COVID-19 epidemic began, Applicant applied for and received a mortgage forbearance, and the amount of his Federal Housing Administration (FHA) mortgage went from \$150,000 to \$163,000 as the deferred interest payments were added onto the mortgage. (Tr. 32-33) His monthly mortgage payment was \$1,200. (Tr. 45) His student loans are in a COVID-19 deferral. (Tr. 40) Applicant's annual income is \$56,000, and his spouse's annual income is about \$20,000. (Tr. 47-48) Applicant is making his required payments on two vehicle loans. (Tr. 39; GE 5) His state and federal income taxes are current. (Tr. 41) He has \$19,500 in his 401(k) account, about \$1,700 in a stock-investment account, and about \$1,300 in his savings account. (Tr. 42, 49) He has not had financial counseling. (Tr. 45) He uses a budget to manage his payments. (Tr. 44)

Applicant's budget indicates his family's net monthly income is \$5,350, his monthly expenses are \$2,980, and his net monthly remainder is \$2,370. (AE D) Applicant has about \$1,400 extra each month because of the deferment and/or forbearance in the payment of his mortgage and student loans, and he used the extra funds to repair his car (\$2,000), and to buy a computer, dishwasher, washer, and dryer. (Tr. 43, 48) He also paid a few bills. (Tr. 48) He received \$2,000 or \$3,200 from the federal government for COVID-19 relief, and he used the funds to pay credit card debt and some other debts. (Tr. 50)

Applicant's 2019 federal income tax return indicates he and his spouse's adjusted gross income (AGI) was about \$65,700, and his federal income tax refund was about \$3,700. (AE E) His 2020 federal income tax return indicates he and his spouse's AGI was about \$61,000, and his federal income tax refund was about \$3,600. (AE F)

## 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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 Director of National Intelligence 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 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. 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 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.

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.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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 Applicant owes seven medical debts totaling \$22,823. 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)).

Circumstances beyond Applicant’s control adversely affected his finances, including medical problems, underemployment, and unemployment. However, “[e]ven if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he maintained contact with creditors. After he received the SOR, he discussed a settlement and payment plan with the creditor; however, he said he only made payments totaling about \$617 from April to September 2021. His payments are insufficient to establish a track record of payments, or good-faith mitigation of his delinquent SOR debt.

Several of Applicant’s delinquent debts have been either charged off or dropped from his credit report or both. “[A] creditor’s choice to charge-off a debt for accounting purposes does not affect the debtor’s obligation to the creditor.” ISCR Case No. 15-02760 at 3 (App. Bd. Dec. 29, 2016). “[N]on-collectability of a debt does not preclude consideration of the debt and circumstances surrounding it in a security clearance adjudication.” ISCR Case No. 15-05049 at 3 (App. Bd. July 12, 2017) (emphasizing security significance of debts despite being charged off).

“[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). 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 the debt is 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.

Applicant did not describe any financial counseling. Applicant did not provide documentary evidence showing he was not responsible for any of the SOR debts. He did

not provide sufficient documentation about why he was unable to make greater documented progress resolving the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, and 1.g. There is insufficient assurance that his financial problems are being resolved. Under all the circumstances, 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 30 years old, and he has been employed in electrical design for fleet sustainment since 2017. In 2018, he was awarded an associate's degree in 3D drafting and design. There is no evidence that Applicant violated his employer's rules, committed criminal conduct, used illegal drugs, or abused alcohol.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. Most of his non-medical debts are either in forbearance, deferment, or current. He paid \$617 to address his medical debts from April to September 2021, including \$276, which resolved the debt in SOR ¶ 1.e for \$1,382. He timely filed his federal and state income tax returns. He uses a budget to pay his debts.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why he was unable to make greater documented progress resolving the seven delinquent SOR debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, and 1.g. It is unclear why he did not use more of the extra funds from the forbearance of his mortgage and deferment of his student loans to address the SOR debts. His lack of responsible financial action raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.



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. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. 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. Applicant failed to mitigate 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 through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.g:	Against Applicant

### **Conclusion**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security 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