



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



In the matter of: )  
)  
) ISCR Case No. 20-02381  
)  
Applicant for Security Clearance )

**Appearances**

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

11/03/2021

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On December 14, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on December 21, 2020, and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 12, 2021, and the hearing was convened as scheduled on

August 6, 2021, using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as a hearing exhibits (HE I and II). Applicant testified and offered exhibits (AE) A-G, which were all admitted. DOHA received the hearing transcript (Tr.) on August 17, 2021.

### **Findings of Fact**

In his SOR answer, Applicant denied all of the allegations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 75-year-old employee of a federal contractor performing the duties of an engineer. He began working at his present job in June 2019. Applicant retired from full-time employment in 2010. He remained retired and not working until about 2017 when he took a part-time job. During his retirement period, he moved to a foreign country to live part time and where he purchased a home (FH). He was solicited by his current employer to work for them, because of his engineering background, which he did, starting in 2019. He earned his bachelor's degree in 1969. He is twice divorced (2005 and 2008) and was most recently married in 2011. He has three children (one is deceased), the youngest for which he pays child support. He has previously held a security clearance. (Tr. 6, 30; GE 1, 5)

The SOR alleged eight delinquent accounts (seven credit cards and a medical debt) totaling approximately \$48,000. The debts are established by credit reports from August 2019, January 2020, and February 2021. Applicant's responses in his July 2019 security clearance application (SCA); and his personal subject interview (PSI) with a defense investigator in September 2019. (SOR ¶¶ 1.a – 1.h) (GE 1-5)

Applicant admitted that he applied for the credit cards and incurred charges using the cards for renovating his FH. He made payments on all the cards for some time, then between September and November 2018 he stopped making the payments. His reasons for doing so were: 1) he was upset that his credit score went down because he used these cards; 2) he believes the credit cards companies do not follow the law that applies to them under the Fair Credit Reporting Act (15 U.S.C. § 1681), specifically he alleges they do not keep appropriate records, they fail to conduct proper investigations, and they fail to communicate in writing with complainants; 3) he wanted the credit-card companies to negotiate a lower interest rate on the cards. (Tr. 32-35, 37, 40-41, 46; GE 1, 5; AE D, F; SOR Answer)

The status of the SOR debts is as follows:

**SOR ¶¶ 1.a-1.g-\$48,079.** These seven credit cards have all been charged off for nonpayment. Applicant admitted opening the accounts, using the cards to charge goods and services, paying on the balances up until September through November 2018 when he stopped making payments. He has not made any further payments. He disputed the

accounts in writing in August 2019 with a credit reporting agency. These debts are unresolved. (Tr. 32-35, 40-41, 43-46, 56; GE 3, 4; AE D, G)

**SOR ¶ 1.h-\$284.** Applicant claimed he disputed this medical debt and it no longer appears on his latest credit report. The debt was less than seven years old, so it is unlikely that it was removed from the credit report because it was stale. This debt is resolved. (Tr. 42-43; GE 4)

Applicant has more than sufficient financial resources to resolve all these debts. He chooses not to do so based upon principle—he does not believe the credit card companies follow the law and therefore he will not pay them. His net worth is in excess of \$1 million. His gross yearly earnings from his job and social security retirement is approximately \$167,000. After expenses each month, he claims a remainder of approximately \$7,800. He testified he had the resources to pay these debts, but he would have to withdraw money from his investment accounts and incur tax liability, which he would not do. (Tr.39-40, 48-51, 53, 56; AE A-B)

### **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 are 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, 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 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

Section 7 of EO 10865 provides that 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**

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG & 19 and the following potentially apply:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant applied for seven credit cards, used them to purchase goods and services, paid towards the balances on the cards until September through November 2018, then decided to dispute all the accounts. All seven credit card accounts have been charged off. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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

Applicant's debts are recent because they are ongoing. He failed to produce evidence showing that recurrence of his financial problems is unlikely, since he has a philosophical problem with how credit card companies do business. AG ¶ 20(a) is not applicable.

Applicant voluntarily incurred all these debts when he used the proceeds to renovate FH. He did not incur circumstances beyond his control. AG ¶ 20(b) is not applicable.

Applicant did not present evidence of financial counseling. Additionally, he failed to put forth a good-faith effort to resolve his debts after he decided to stop making payments in late 2018. All seven credit cards remain unpaid. AG ¶¶ 20(c) and AG 20(d) do not apply, except to SOR debt ¶ 1.h.

Applicant claims he has a reasonable basis to dispute these debts because he believes the creditors involved have not followed the law. That may be a dispute for another forum, but not this one. Applicant is an experienced, educated engineer and voluntarily chose to apply for these credit cards and accept the benefit of purchasing good and services using those cards. He even made payments towards the balances owed on the cards. However, when he became upset with the high interest rates he agreed to pay

and when the companies chose not to negotiate those rates with him, he stopped his payments and disputed all the debts. Under these circumstances, I do not find that Applicant's disputes are reasonable. AG ¶ 20(e) is not applicable.

### **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 commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's dispute with the seven creditors. However, I also considered his willingness to use credit cards to finance the work he did at his FH and his financial resources to be able to pay the debts, but refusing to do so. His judgment and willingness to follow rules (in this case, his initial agreement with the creditors) are called into question by his actions.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

## 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:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge