



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



In the matter of: )  
)  
) ISCR Case No. 20-03796  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

10/27/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 18, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 within the DOD on June 8, 2017.

On July 17, 2021, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on August 18, 2021. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6. Applicant submitted a timely response. There were no objections by Applicant, and all Items are admitted into evidence. Applicant provided documents that are marked as Applicant's exhibits (AE) A through F. There were no objections and they are admitted into evidence. The case was assigned to me on October 6, 2021.

### **Findings of Fact**

Applicant denied all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 67 years old. He is a high school graduate and has certified apprentice credentials. He has been married since 1983. He has been steadily employed to the present, except from November 2006 to January 2007. (Item 4)

Applicant has a history of financial problems. He completed a security clearance application (SCA) in October 2009. In it he disclosed two delinquent credit card debts (\$1,960 and \$7,654) and two judgments (\$3,839 and \$6,020). (Items 3, 4)

In January 2020, Applicant completed another SCA. In response to Section 26: Financial Record, he disclosed all of the delinquent debts alleged in the SOR. He stated that the debts in SOR ¶¶ 1.c (\$6,801); 1.d (\$2,773); 1.e (\$1,814); 1.f (\$1,207); and 1.g (\$1,128) were personal loans that had been turned over to collection agencies. He stated that each of these debts were delinquent because his wife was laid off from employment in July 2014. He listed the date the debts became an issue as July 2014. He further stated that each debt was submitted to a debt relief company (DR) to negotiate a payoff." (Item 3)

Applicant further disclosed in his SCA the delinquent debt in SOR ¶ 1.a (\$41,795) for a 2017 vehicle that he surrendered to the dealership because he was unable to make the payments. He noted the financial issue began in February 2018. He said the debt was incurred because his wife was laid off from employment and she became permanently disabled and could no longer work. The debt was turned over to DR. Applicant also disclosed in his SCA the delinquent debt for medical services in SOR ¶ 1.i and stated he was unaware this debt was not covered by his medical insurance. It was submitted to DR to negotiate a payoff (Item 3)

Applicant disclosed in his SCA the debts in SOR ¶¶ 1.h (\$448) and 1.b (\$9,570) to the same creditor for a time-share contract and fees associated with it. He stated: The reduced income from his wife's Social Security could no longer support this payment. The financial issue began in June 2019 and both debts were submitted to DR to negotiate a payoff. (Item 3)

Finally, Applicant disclosed in his SCA the debt in SOR ¶ 1.j (\$198) for trash services. He indicated that the reason he was unable to pay it was because his wife was laid off from employment in July 2014, and it had been submitted to DR. (Item 3)

In Applicant's July 2021 answer to the SOR, he denied all of the SOR debts. He explained that the vehicle he voluntarily surrendered to the creditor (SOR ¶ 1.a) was sold and \$15,795 is the deficiency balance. Sometime after Applicant completed his SCA in January 2020, he hired Lexington Law to dispute his debts. The debt in SOR ¶ 1.a remains in a charged-off status on Applicant's credit reports. The debt is not resolved. (Items 2, 3, 5, 6; AE C)

Applicant provided a response to the FORM in which he stated that his wife was laid off from employment on September 30, 2017. She was then injured while searching for work and was declared disabled by the Social Security Administration effective October 1, 2017. It is unknown whether Applicant's wife had two periods of unemployment as he indicated she was first unemployed in 2014, which caused them financial difficulties. (AE A, AE E).

Applicant stated in his answer to the SOR that the debt in SOR ¶ 1.b is for a time share he and his wife purchased. He stated they were pressured into the purchase. It is unknown when this purchase was made. He requested the contract be canceled after his wife became disabled. Fees associated with the time share with the same creditor are alleged in SOR ¶ 1.h. He is disputing both debts. In his FORM response, he stated that SOR ¶ 1.b was removed from his credit report. The debt in SOR ¶ 1.h remains on his credit report. It is not resolved. (Item 2, AE A, AE C)

In Applicant's FORM response, he stated that the debts in SOR ¶¶ 1.d, 1.f, 1.g, 1.i and 1.j were removed from his credit report. Applicant disclosed all of these debts as delinquent in his 2020 SCA. He did not indicate if they were removed because he paid them. They were reported on Applicant's March 2020 and December 2020 credit reports. They do not appear on the August 2021 credit report provided by Applicant. (Items 3, 5, 6; AE C)

In Applicant's FORM response, he stated that the debts in SOR ¶¶ 1.a, 1.c, and 1.e are being resolved. He said that Lexington Law is working to resolve the debt for the repossessed vehicle in SOR ¶ 1.a. Applicant stated that he spoke with the creditor for the debt in SOR ¶ 1.c and assured him that as soon as he was done paying \$340 on a credit card he owed that he would begin paying this debt. He stated with regard to the debt in SOR ¶ 1.e that it is being reviewed by Lexington Law. None of these debts are resolved.

Applicant stated in his FORM response that his "debt situation has improved and continues to improve." (AE A) He further stated that he has taken all reasonable and responsible means available to him under the circumstances to resolve his debts. (AE A)

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has numerous delinquent debts that began accumulating in 2014. He disclosed in his 2020 SCA that he owed each of the debts alleged in the SOR and he was working with DR to negotiate payoffs with each creditor. He then denied each debt in his answer to the SOR. He has not provided evidence that he has paid any of the delinquent debts he admitted he owed. Although, disputing debts may be a way to have them removed from Applicant's credit report, it is clear by Applicant's admission that the debts are legitimate and he has chosen not to pay them. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 persons 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 indicated in his 2020 SCA that his financial issues began in 2014 when his wife was laid off from employment. It appears she must have resumed work sometime after that because he then stated in his FORM response that she was laid off again in September 2017. He did not provide an explanation for why he did not address his delinquent debts when she resumed work. It was determined that she was permanently disabled in October 2017. She receives Social Security disability payments.

Applicant disclosed on his SCA each delinquent debt alleged in the SOR and stated that he was working with DR to negotiate payoffs for each. It appears he has abandoned that option and now denies the debts, and is disputing them through Lexington Law. He has been able to have some of his delinquent debts removed from his credit report. He indicated that Lexington Law is working to resolve the remaining debts or dispute them. Applicant did not provide evidence that he has paid any of the debts he admitted that he owed in his SCA. Applicant did not provide evidence of a reliable financial record to show that his failure to pay his creditors will not happen in the future. His conduct casts doubt on his reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial difficulties to his wife being laid off from her employment in 2014. As noted above, she must have resumed work, because Applicant stated that she was laid off again in September 2017 and became disabled shortly thereafter. He did not provide any evidence of action he took to resolve the debts he noted became delinquent in 2014. Although, he has disputed and had some delinquent debts removed from his credit report, others remain and have not been resolved. I find Applicant's wife's unemployment in 2014 and again in 2017 was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant's failure to pay his delinquent debts after his wife resumed work was not acting responsibly. Although, he may be able to have debts he acknowledged he owed removed from his credit report, I do not find this conduct falls within the scope of acting responsibly. AG ¶ 20(b) marginally applies.

There is evidence that Applicant is working with Lexington Law and it is attempting to remove debts from his credit report. He did not provide information about his current finances. Despite working with Lexington Law, I am not convinced that Applicant's financial problems are under control. I find AG ¶ 20(c) partially applies. There is no evidence that Applicant has made a good-faith effort to repay any of his creditors. AG ¶ 20(d) does not apply.

Applicant disputed all of the delinquent debts alleged in the SOR. He did not provide an explanation for the basis of his disputes. He admitted and disclosed all of these debts in his SCA and they are supported by credit reports. Some of his delinquent debts were removed from his credit report. However, Applicant did not provide evidence that the debts alleged are not legitimate. AG ¶ 20(e) does not apply.

### **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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the 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.

Applicant has a significant history of financial problems. When he completed his 2009 SCA he disclosed two delinquent credit card debts and two judgments. In his 2020 SCA, he disclosed all of the delinquent debts alleged in the SOR. He then denied each of the same debts in his SOR answer. He has disputed each of the debts and has been able to have some removed from his credit report. This may be the best financial avenue for Applicant to follow to eventually put his finances in order and clear his negative credit history. However, his lengthy history of failing to maintain a reliable financial track record and pay his legitimate creditors is a security concern. Applicant continues to have debts that he admitted he owed that remain unpaid. He failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

### **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-1.j	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge