



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



In the matter of: )  
 )  
 ) ISCR Case No. 20-00380  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

11/30/2021

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 15, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant submitted an undated response to the SOR and requested a decision based on the written record in lieu of a hearing. On December 10, 2020, he changed his request to a hearing before an administrative judge. The case was assigned to me on June 14, 2021.

The hearing was convened as scheduled on July 28, 2021. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through M, which were admitted without objection. The record was held open for the Government to submit additional information. Department Counsel submitted documents that I have marked GE 9 and 10 and admitted without objection.

## Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He served in the National Guard from 1990 to 1997, the U.S. Army from 1997 to 2002, and the Army Reserve from 2002 to 2016. He is rated as 80% disabled by the Department of Veterans Affairs (VA). He seeks to retain a security clearance, which he has held since he served in the military. He has a bachelor's degree that he earned in 1997, and a master's degree that he earned in 2001. He married in 1994 and divorced in 2019. He has three adult children. (Transcript (Tr.) at 12-15, 22-23; GE 1; AE G-I, M)

Applicant has a history of financial problems, including a Chapter 7 bankruptcy discharge in 2003. In 2007 and again in 2013, the then U.S. Army Central Personnel Security Clearance Facility (CCF) granted Applicant's security clearance and access to sensitive compartmented information (SCI) with the warning that "failure to resolve your delinquent debts or other subsequent unfavorable information may result in the suspension of your security clearance." There is no evidence that Applicant received a copy of the warnings. (Tr. at 25-28, 31-32; GE 3, 4, 9)

The SOR alleges six delinquent debts, including two charged-off auto loans and a charged off credit card debt owed to the same credit union. Applicant admitted that he owed the debts at one time, but he established that all of the debts have been settled, paid, or otherwise resolved.

Applicant attributed his financial problems to reduced earnings after he was discharged from the military and a protracted divorce. He and his ex-wife separated in 2013, but the divorce was not final until 2019. He followed his attorney's advice and did not resolve his debts until the court divided their assets and liabilities and ordered that he was responsible for the three debts owed to the credit union. He was also on short-term disability after an accident in 2019. (Tr. at 16, 19-21, 24-25, 31; Applicant's response to SOR; GE 1, 2; AE E, M)

Applicant settled the charged-off auto loan (SOR ¶ 1.a) for \$5,364, with the final payment of \$1,964 made in February or early March 2021. The SOR alleges the amount owed was \$18,840. That amount apparently came from the December 2018 combined credit report. TransUnion and Experian reported that \$18,840 was charged off, but the balance was reported as \$15,327. Equifax reported that \$15,327 was charged off, with a balance of the same amount. I conclude that \$15,327 was owed on the account before it was settled. Applicant settled the \$14,330 charged-off auto loan (SOR ¶ 1.b) for \$2,866, which he paid in December 2020. He paid \$2,190 in December 2020 to settle the \$10,953 charged-off credit card debt alleged in SOR ¶ 1.b. (Tr. at 15-17; Applicant's response to SOR; GE 5, 6, 8; AE A-C)

Applicant paid, settled, brought current, or otherwise resolved the remaining three SOR debts, which totaled about \$3,641. His finances are otherwise stable. He has a good job with an annual salary of \$135,000. He also receives disability pay from the VA. (Tr. at 17-23, 35; Applicant's response to SOR; GE 2, 5, 6, 8; AE D, M)

Applicant made three deployments to Afghanistan between 2007 and 2011. He submitted letters attesting to his excellent performance of duties in the military and his strong moral character. He is praised for his dedication, professionalism, trustworthiness, and integrity. He was arrested in 2014 and charged with driving under the influence and a weapons charge. He pleaded guilty to the DUI charge pursuant to a deferred adjudication, and the weapons charge was dismissed. (Tr. at 14, 29-32; GE 10; AE F)

## **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 six delinquent consumer 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;

(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 attributed his financial problems to reduced earnings after his discharge, a protracted divorce, and an accident that resulted in him going on short-term disability. He followed his attorney's advice and did not resolve his debts until the court determined who was responsible for the debts.

All of the SOR debts have been settled, paid, or otherwise resolved. Applicant's finances are otherwise stable. He has a good job with an annual salary of \$135,000, and he receives disability pay from the VA.

Applicant had a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

## **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 favorable character evidence, years of honorable military service, and also his 2014 arrest and subsequent conviction.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	For Applicant
Subparagraphs 1.a-1.f:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge