



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



In the matter of: )  
)  
) ISCR Case No. 20-00423  
)  
Applicant for Security Clearance )

**Appearances**

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

12/16/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On November 9, 2020, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline J, criminal conduct. 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 February 8, 2021, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. He provided a supplement to his

answer on July 16, 2021. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on August 31, 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 9. Applicant did not submit a response to the FORM or file objections to any evidence offered. All Items are admitted into evidence. The case was assigned to me on October 26, 2021.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.j, 1.n through 1.q, 1.r, and 2.a. He denied the SOR allegations in ¶¶ 1.k through 1.m and 1.s through 1.w. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He never married. He has a nine-year-old child. He has worked for his present employer, a federal contractor, since July 2018. He was unemployed from November 2013 to April 2014. He attended college from 2004 to 2007. (Item 3, 4)

Applicant completed a security clearance application in October 2018. In it he did not disclose any delinquent debts. He disclosed that in 2016, he was made aware during a traffic stop by police that he had an outstanding warrant. He said he was unaware of it. The charge was for criminal mischief from an incident with a former partner. The parties agreed that Applicant would make restitution and pay a fine, which he did. He provided supporting documents. The charge was dismissed. (Items 2, 3) (Any derogatory information that was not alleged in the SOR, will not be considered for disqualifying purposes. It may be considered when making a credibility determination, in applying the mitigating conditions, and in a whole-person analysis.)

SOR ¶¶ 1.a through 1.j allege collection accounts for student loans from a state guarantor agency. This agency purchases and administers defaulted student loans. The total amount alleged for these student loans is approximately \$18,287. Credit reports from July 2020 and August 2019 reflect that these student loans became delinquent in July 2015, and the original creditors were banks. The credit reports do not note when these accounts were originally opened. (Items 5 and 6)

SOR ¶¶ 1.n through 1.q allege collection accounts from the Department of Education for student loans. The total amount alleged for these loans is approximately \$14,325. Credit reports from July 2020, August 2019, and November 2018 reflect that these accounts were opened in 2008 and 2009 and became delinquent in 2015. (Items 5, 6, and 7)

It appears that all or some of these student loans may have been transferred or assigned by the government to other collectors who administer the collection of student

loans, but I am unable to decipher the specific status of each loan, where it might have been transferred, and if it was transferred more than once.

In Applicant's February 2021 answer to the SOR, he stated that the student loans in SOR ¶¶ 1.a through 1.j were consolidated into a single loan and are in good standing. He does not understand why his credit report reflects that the loans are being listed as delinquent with the state guarantor. He stated that when he reviewed his Equifax and Credit Karma reports the delinquent loans were not reflected under the guarantor. He did not provide a copy of these reports. In his supplemental answer, Applicant provided a copy of "loan details" from the loan servicer from July 2021, which reflect a repayment start date of November 2011, and the guarantor is listed as the state guarantor listed in the SOR. The documents provided are for three loans with payoff amounts of \$2,898; \$2,979; and \$2,293. The SOR allegations are for ten loans totaling \$18,287. (Items 1 and 2)

In response to government interrogatories from May 2020, Applicant provided documents for three loans reflecting they were opened in 2007 and had balances of \$927, \$400, and \$5,214. The payment history on the three accounts reflects two missed payments in 2019, two missed payments in 2018, one missed payment in 2017, and five missed payments in 2016. There is no information for 2015 and either no information for 2014 or delinquencies more than 90 days. It is unclear if these are the same loans as noted in his July 2021 answer. (Item 4 pages 26-28)

Applicant was interviewed by a government investigator in January 2019. He was confronted with the delinquent student loans that were in collection from the state guarantor (SOR ¶¶ 1.a through 1.j), and other delinquent debts alleged in the SOR (SOR ¶¶ 1.l-\$253; 1.m - \$1,484; 1.r - \$628; 1.s - \$190; 1.u - \$661; 1.v - \$576; and 1.w - \$332). He said he had no knowledge of what any of these debts were and said his identity had been stolen in 2015 and 2016. He was confronted with DOE student loans (SOR ¶¶ 1.n through 1.q) and said he had no federal debt and all of his student loans were current. He said he had refinanced his DOE student loans to lower the payments. He let the loans become past due and put off making payments because he was focused on other priorities at the time. He said the loans were delinquent from July 2016 to October 2016. Applicant was confronted by the investigator with collection accounts. He explained that they were the original carrier of the loans, which were then rolled into the DOE loans.

In Applicant's May 2020 responses to government interrogatories, he said he had placed his student loans into deferment because he was unemployed for a period and had other financial obligations such as housing, healthcare, and basic needs. He said he was notified by the Office of Personnel Management in December 2014 that his social security number and other identifying information were part of a data breach. This happened to tens of thousands of people who worked in various capacities for the federal government. He was provided with free credit monitoring for a year and when he noticed a credit card had been compromised, he requested it be extended. He said he disputed certain entries on his credit report and requested verification from other creditors. (Items 2, 4)

Applicant provided letters he sent to the credit bureaus in July 2021. For some accounts that were not alleged in the SOR, he states he was a victim of identity theft and he never opened the accounts. In the letter to the credit bureau regarding the debts in SOR ¶¶ 1.k, 1.l, 1.m, 1.s, and 1.u, Applicant provided the account name, its balance, and the original creditor. He then stated: "I never had a contract with this debt collector for any debt. Please provide proof from the original creditor that this debt collector owns this debt and has the legal authority to collect it or delete this account." In his answer to the SOR, he stated the accounts in SOR ¶¶ 1.k, 1.l and 1.u were disputed as being opened in his name without his consent due to identity theft. His letter to the credit bureau asks that the original creditor verify it sold the debt to a collector who now has the legal authority to collect the debt. In his July 2021 letters, Applicant is not disputing the original debts and does not claim the debts were incurred through identity theft. He stated he did not have a contract with the collector, not that he never owed the debt. I did not find Applicant's statements credible. I find these accounts legitimately belong to Applicant, and they are unresolved. They are supported by entries on his credit reports.

In the letter regarding the debt in SOR ¶ 1.r, he stated: "This account was charged off and I no longer owe money to this creditor but it's still showing a balance due." This was a credit card that was opened in 2012 and defaulted on in 2014. In his February 2021 answer he stated: "I acknowledge [creditor] this matter was a compromised charge that occurred in relation to the OPM leak. It was considered delinquent and charged off before I received information from OPM stating as such." I did not find Applicant's statements credible. The account was opened in 2012, before the breach. This account remains unresolved. (Items 2, 5, 6, 7)

The debts alleged in SOR ¶¶ 1.t, 1.v and 1.w are medical accounts. The debt in SOR ¶ 1.t was incurred in December 2012 and ¶ 1.w was incurred in April 2014. Applicant stated in his answer that he had contacted the creditors seeking information about the debts and questioning the validity of them. He provided no additional information. The medical debt in SOR ¶ 1.v is listed in Applicant's 2018 credit report, but does not identify a specific creditor. It is not listed in subsequent reports. I find in his favor for this allegation. The other debts are unresolved.

Applicant did not provide any evidence he has participated in financial counseling. He did not provide information as to his current income, expenses, budget or financial stability.

## **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 handling 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; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent student loans and other unpaid debts. 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 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.

There is some evidence that Applicant's identity may have been misused. However, for the debts alleged in the SOR, there is sufficient evidence they are legitimate debts. Although Applicant stated he disputed some, he did not provide evidence that the disputes were resolved in his favor. There is some evidence that Applicant consolidated student loans and has a payment plan with the loan servicer. However, there is insufficient evidence to identify which loans were consolidated and the status of those remaining. Based on the number of loans and the different balances owed, it is unlikely that they all were included in the payment plan. There is also evidence that these loans were in a default status and were in collection. Those that are with the loan servicer are no longer in default, but Applicant has the burden to provide evidence regarding all of the student loan allegations. He did not. I am not in position to decipher which student loans are now held by the loan servicer, which are still held by the state guarantor, and which are with DOE, if any, and their current status. Due to the COVID-19 pandemic there was a moratorium on the collection of student loan payments. The evidence supports that Applicant defaulted on the student loans years before the pandemic.

There is also sufficient evidence to conclude that the medical debts and other consumer debts alleged in the SOR belong to Applicant and are unresolved. Although, he said he disputed them with the credit bureaus, he did not provide the results of the dispute or that they have been removed from his credit report. Applicant acknowledges certain delinquent debts, and requested that the original creditors verify they transferred the debts to the collection agency, who then can act on them. This inquiry does not negate his obligation to pay his delinquent debts. I have considered that Applicant was a victim of identity theft, but he presented insufficient evidence to conclude that these debts did not belong to him. Applicant provided snippets of information, but not enough to meet his burden of persuasion.

Applicant has numerous delinquent debts that are ongoing and unresolved. The status of his current finances are unknown. AG ¶ 20(a) does not apply. Applicant was unemployed for a period in 2013 and 2014. He did not provide any other financial information for what may have impacted his ability to pay his debts. There is evidence he was a victim of identity theft and he disputed debts that were removed from his account. He also provided evidence that he is paying three of his student loans and they are current. However, Applicant has numerous other student loans and other delinquent debts that he did not provide sufficient evidence to show they are either resolved, or he is addressing them. AG ¶ 20(b) has some application.

There is no evidence Applicant has participated in financial counseling. AG ¶ 20(c) does not apply. There is evidence that Applicant is paying three student loans through a loan servicer. As I stated above, I cannot decipher which loans on the SOR he is paying. In the interest of fairness, I have chosen three SOR allegations from the guarantor that come closest to the balances alleged and loan servicer's balances. They are SOR ¶¶ 1.b, 1.i and 1.j. AG ¶ 20(d) applies to these debts, and I find in Applicant's favor on these allegations.

Applicant disputed many of the debts, but he failed to provide sufficient documented proof to substantiate that the debts alleged did not belong to him. He has numerous student loans, but failed to provide evidence to show which ones were consolidated and being paid and the status of the others. He said he was the victim of identity theft, but he acknowledged certain debts and then disputed them because they were turned over to collection agencies, and he wanted the original creditors to verify their actions. He disputed another debt because it was charged off, and he wanted it removed from his credit report. Applicant is responsible for providing evidence of these disputes. He provided letters he sent to the credit bureaus, but not the results of the disputes. He failed to provide evidence of action he may have taken to resolve his medical debts. I find AG ¶ 20(e) has limited application.

#### **Guideline J: Criminal Conduct**

The security concern for criminal conduct is set out in AG & 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG & 31, and the following are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was charged in July 2016 with criminal mischief. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and



does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant was charged with criminal mischief in 2016 due to an issue with his ex-partner. The prosecutors agreed to dismiss the case if Applicant paid restitution. There were limited facts available. It appears the restitution was for a broken window. Applicant paid the restitution and is eligible to have the charge expunged. It has been five years since the criminal behavior. It appears he is no longer in a relationship with this person. I find AG ¶ 32(a) applies.

### **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 Guidelines F and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a significant history of financial problems. He has numerous student loans and other delinquent debts. He had the opportunity to provide evidence to show the status of each of the debts. Insufficient evidence was provided, and 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 successfully mitigate the criminal conduct security concerns, but 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For Applicant
Subparagraphs 1.k-1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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 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