



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01143
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/14/2021

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 13, 2019. The DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on June 25, 2021, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on July 22, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On September 13, 2021, Department Counsel submitted the Government’s file of relevant material (FORM), including documents identified as Items 1 through 7 (Items).

Applicant received the FORM on October 1, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant sent a timeline with an explanation in November 2021, which I labeled as Applicant Exhibit (AE) A. The SOR and the answer (Item 1) are the pleadings in the case. Items 2 through 7 and AE A are admitted into evidence without objection. The case was assigned to me on December 14, 2021.

### **Findings of Fact**

In Applicant's SOR response, he denied SOR ¶¶ 1.a, 1.b, 1.d, 1.g, and 1.i. He admitted SOR ¶¶ 1.c, 1.e, 1.f, 1.h through 1.k, 1.m, and 1.n. Applicant's admissions are accepted as findings of fact. The credit reports in evidence support the delinquent debts alleged in the SOR. (Items 1, 5 and 6)

Applicant is 62 years old. He married in 1997 and divorced in 2013. Since February 2020, Applicant has been employed by a defense contractor. His job title is configuration manager. (Item 2)

The SOR alleges under Guideline F that Applicant has 14 delinquent debts totaling about \$81,000. He also had approximately \$35,000 in past due mortgage payments. Applicant disclosed adverse financial information on the SCA he signed in February 2020. He stated in his November 2021 response to the Government's brief that from 2011 through 2013 he was going through a divorce. He was paying for a house and the utilities for his wife, and also paying for an apartment and utilities for himself. These circumstances caused him to experience financial issues, and he had to use his personal savings and retirement savings to stay current with his financial obligations. (Item 1; AE A)

In 2016, Applicant was admitted to the hospital for a couple of months due to kidney complications. After his employer's paid leave was used up, he no longer received a paycheck. Applicant was placed on short-term disability and was paid about 75% of his original paycheck, but then he was required to go on long-term disability, where he only received about 50% of his paycheck. He tried to get approval from his doctor to return to work, but he soon discovered that he had congestive heart failure, and he was required to stay on long-term disability. In 2017 and 2018, he continued to fall behind on his bills, and with the addition of his medical bills, he found himself in a precarious financial situation. He became delinquent on his mortgage in 2018, and in 2019, his vehicle was repossessed and he was evicted from his apartment. His home eventually went into foreclosure. (Items 1 and 2; AE A)

Applicant listed in his July 2021 SOR response that that he had "some investments and annuities that are coming due later this month, which will be enough money to pay off all this debt." (Item 1) In his November 2021 response, he failed to provide any documentation to show what, if any, accounts were resolved, successfully disputed, or paid. The most recent (unfrozen) credit bureau report from April 2021 showed that Applicant's delinquencies totaled approximately \$65,000. Applicant did not provide evidence of financial counseling or his budget.

Department Counsel noted in the FORM brief that Applicant had 30 days from the receipt of the Government's information in order to submit documentation of any extenuation or mitigation of the financial considerations security concerns. Applicant provided a timeline of his financial issues with detailed explanations. He did not address whether he had resolved any of the delinquent accounts with his investment money, as indicated in his SOR response. He did not provide documentation of the current status of his SOR debts, or provide documentation of his past communications with creditors. (Government's brief; AE A; Item 1)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 access to classified information 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. 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 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.

## 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

The SOR debts are established by the credit reports and Applicant's admissions in the record. AG ¶¶ 19(a) and 19(c) apply.

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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

In May 2020, Applicant was placed on notice during his background interview that his outstanding debts were a security concern to the Government. In his July 2021 SOR response, he said that his investments and annuities would provide enough money to pay off all of his debts. The evidence in the record is clear that Applicant's financial issues were due to circumstances beyond his control. However, the second prong of this assessment, whether Applicant acted responsibly under the circumstances to resolve his financial delinquencies after being put on notice, must also be established. Although he provided a timeline with detailed explanations, Applicant provided no proof of account settlements or payments for any of the alleged SOR debts in his response to the Government's brief. He did not submit documentation of any past communications with creditors, or provide the current status of these delinquent accounts. The record is lacking evidence of his good-faith effort to repay or resolve any of his past due debts. The second prong of this assessment has not been satisfied. There is insufficient evidence to show that Applicant's financial problems are under control and unlikely to recur. None of the mitigating conditions apply. Applicant failed to mitigate the financial considerations security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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(a):

(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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant is 62 years old and has been employed by a federal contractor since February 2020. He did not provide any evidence of payments, payment plans, or other actions to resolve the debts alleged in the SOR. There is no track record of steady, systematic payments over an extended period of time. His actions show a lack of financial responsibility and raise questions about his trustworthiness, reliability, and ability to protect classified information. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

### **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.n:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge