



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



In the matter of: )  
)  
) ISCR Case No. 20-01724  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2022

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not present documentation to support his burden of proof. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 15, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017. Applicant responded to the SOR and 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) on September 24, 2021. Applicant received the FORM on October 18, 2021. Applicant objected to the Government’s evidence, and provided a response to the

FORM (Item 8). The Government's evidence, included in the FORM and identified as Items 1 through 7 is admitted without objection. The case was assigned to me on December 2, 2021. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is 46 years-old and twice divorced, but has recently remarried. He has three biological children, and two adult step-children. (Item 8) He served in the U.S. Army (active duty) from September 1996 until December 2013. From January 2014 until December 2018, he served in a state Army National Guard. He completed a security clearance application on April 14, 2019. (Item 3) He has held a security clearance since May 1997. Applicant has worked for his current employer since March 2014. (Item 3)

### **Financial**

The SOR from October 2020, alleges that Applicant has about \$88,348 in delinquent consumer debt. (Item 4) The allegations are supported by Applicant's latest credit report. He admitted 13 of the SOR allegations. He denied the judgment of \$1,744 in (1.a), and the judgment of \$3,513 in (1.b) because they are satisfied. Applicant also denied the delinquent debt in the amount of \$40,146 in (1.c) because his home foreclosure sale was completed in January 2020, and he owes no deficiency. He provided documentation for these allegations. (Item 3)

Applicant denied other delinquent debts (1.l), (1.i), (1.r), (1.s), and (1.t) and provided explanations. (Item 4) His explanation was that the debts were unknown to him or were not listed on his credit report. Finally, he denied SOR (1.d) and (1.f) because they appear to be duplicates. (Item 2)

Applicant attributed the delinquent debts to his second wife who had a financial power of attorney when he was deployed three years out of five years. (Item 8). He found out later that she showed him a spreadsheet of all open accounts that showed payments and dates. She assured him that their finances were fine. At some unknown point they separated, and Applicant wanted a divorce in 2016. (Item 3) However, she was still handling the finances, and she removed \$10,000 from bank accounts, turned off automatic payments, and changed the address to which bank information was sent. (Item 2) Applicant stated that it was several months before he realized that she had incurred over \$54,000 in delinquent debt, two vehicle repossessions, and a house on its way to foreclosure. (Item 2 at 5). There is no explanation in the record why he did not immediately monitor their finances when he told his second wife that he wanted a divorce. He neglected to ensure from that point on that the bills were being paid. He acknowledged that this decision was not his best. (Item 8) It is not known why it took him a "couple months" to realize that no bill payments were being made. (Item 2)

In Applicant's 2020 subject interview, he stated that he had no income to pay the delinquent bills and he was making no attempt to make formal restitution to the debtors.

He related that he ignored the bills until the court ordered collection was initiated. Applicant was confronted with the debts listed in the SOR by the investigator. (Item 7) He repeatedly stated that since it was due to his second wife's actions, and he has no income to pay the bills, he would continue to ignore all attempts of debt collection. (Item 7)

As to SORs 1.a, 1.b, and 1.c, the judgments have been satisfied and there is no deficiency owed on the foreclosed home. He provided documentation to prove these claims. (Item 2 at 3,8, and 9) Applicant satisfied one other delinquent debt in 1.l in the amount of \$3,938 in 2021, 14 months after his subject interview. (Item 4)

As to the other delinquent accounts that he said were not on his credit report they are still appearing. He denied any knowledge of SOR 1.i and 1.r. Applicant's denial of these two vehicle repossessions, because the vehicles were repossessed and there was no further action taken. (Item 2 at 4)

In his answer to the FORM, Applicant added that his earlier credit report before his second wife had a financial power of attorney shows that his accounts were paid as agreed. Regarding any good-faith efforts, he responded that a child was born in January 2020 and he was on paternity leave. His wife's health was compromised, so he stayed home from work from March to May 2020. His union went on strike until August 2020. As a part of these circumstances it has taken time for him to recover financially. He stated that he has set up five individual payment plans with the debtors in SOR 1.m-1.o, but he provided no documentation. He stated that he will be getting a raise and that when he finished paying the collection accounts to the debt collection company, he will move on to the next debts. (Item 8)

At the interview, Applicant was given an opportunity to submit documentation regarding the financial delinquencies. He failed to provide any documentation or dispute information. (Item 7)

Applicant is gainfully employed. There is some information in the record concerning his net monthly household income of \$4,140, with monthly expenses of about \$3,500. His total discretionary income was \$613. No information concerning financial counseling was provided. Applicant provided no documentation to support payment on any of the other delinquent debts listed on the SOR, save 1.a,1.b, and 1.c. It does appear that 1.d. and 1.f are duplicates.

### **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 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(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."

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"); and 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted, and his credit reports confirm, that he is indebted in the amount of about \$40,000. He blames the debts on the nefarious actions of his second wife who had a financial power of attorney while he was deployed. However, he failed to monitor his wife's control of the family expenses. After he announced his desire for a divorce, he neglected to ensure that the bills were being paid. His total reliance on his spouse does not absolve him of his responsibility. Her behavior was beyond his control when he was deployed, but he did not act responsibly after he found out about the situation. He also ignored his creditors and told the investigator that he had no income to pay or resolve his delinquent debts. This does not show a good-faith effort to resolve his debts. He satisfied one debt in 2021, and the judgments were satisfied by court

order. He owed no deficiency on the home foreclosure, but he had not taken any other actions to resolve the situation. All the other delinquent debts on the SOR are unresolved. He provided no evidence to prove that he has a track record of paying the remaining delinquent debts. He has not sought financial counseling.

Based on the scant evidence produced by Applicant, it is impossible to conclude he made a sufficient good-faith effort to resolve his debts or that his financial situation is under control. The Government has cause to question whether Applicant has his finances under control. Despite gainful employment, there is no evidence that Applicant has made any payments on any of the delinquent debts. Any doubts must be resolved in favor of the Government.

### **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 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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

### **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.c:	For Applicant
Subparagraphs 1.d-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m- 1.v:	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 interest to grant Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge