



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



In the matter of: )  
)  
) ISCR Case No. 20-03007  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

01/06/2022

**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 December 7, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on December 31, 2020, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2021.

The hearing was convened as scheduled on August 30, 2021. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE H and I and admitted without objection.

## Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer since June 2019. He attended college for a period, but he has not earned a degree. He married in 2002 and divorced in 2005. He has cohabitated with his girlfriend since 2016. He has four children between the ages of 10 and 18. (Transcript (Tr.) at 24, 39; GE 1, 2)

Applicant has a history of financial problems, including a Chapter 7 bankruptcy discharge in 2010. The SOR alleges the bankruptcy; ten delinquent medical debts totaling about \$3,244; three child support accounts that are in arrears for about \$29,700; a charged-off auto loan for \$16,862; and two miscellaneous delinquent debts totaling \$1,600. Applicant admitted owing all of the non-medical debts, and he denied owing the medical debts. He asserted that he paid some of the medical debts, and he had payment arrangements for the rest of the medical debts. (Tr. at 26; Applicant's response to SOR)

Applicant attributed his financial problems to his 2005 divorce and the loss of income after he quit a job in July 2016 that he had held since 2009. The company was bought by another company, and he did not agree with the ethics and practices of the new management. The medical debts are copayments for his children that his ex-wife failed to bring to his attention. (Tr. at 23-24, 27-28, 35-38; Applicant's response to SOR; GE 1, 2)

Applicant's four children are with three mothers, which is why there are three child support accounts. The SOR alleged the past-due amount of the accounts, not the balances. The past-due amounts and the balances increased from the July 2019 credit report to the June 2020 credit report, but they decreased from the June 2020 credit report to the March 2021 credit report, which indicates that Applicant is paying his child support and arrearages. His child support payments and arrearages are being garnished from his pay checks. He is paying \$717, \$705, and \$513 per month, for a total of \$1,935 in monthly child support payments. The March 2021 credit report lists one account as no longer past due. Applicant's oldest child is 18 years old and not attending college. His child support payments for that child continue to be paid at the same rate, except they will be used to pay the arrearages, which will be paid quicker since the whole payment is going to the arrearages. His two middle children turn 18 in 2023. (Tr. at 24-25, 35-37; Applicant's response to SOR: GE 1-5)

The creditor for the \$16,862 charged-off auto loan (SOR ¶ 1.a) offered to accept \$5,850 in settlement of the debt. Applicant could not afford to make a lump-sum payment, so he arranged for monthly payments of \$250 to be automatically debited from his credit union account. He paid \$100 in December 2020, then started monthly payments of \$250. He documented that he made nine \$250 payments between January and September 2021, which in addition to the \$100 payment, total \$2,350. (Tr. at 28-30; Applicant's response to SOR; GE 3-5; AE C, D, H, I)

Applicant had payment arrangements for the \$810 delinquent loan (SOR ¶ 1.c). He documented eight \$90 payments between December 2020 and May 2021. (AE E) Those eight payments total about \$720, which is one payment short of \$810. (Tr. at 33; Applicant's response to SOR; GE 3-5: AE E, H, I)

Applicant agreed to pay \$65.82 every two weeks, starting in January 2021, for the \$790 delinquent loan (SOR ¶ 1.c). He documented twelve \$65.82 payments between January 2020 and April 2021, which paid the debt in full. (Tr. at 33-34; Applicant's response to SOR; GE 3-5; AE B, H, I)

The SOR alleges ten medical debts totaling about \$3,244, as listed on a July 2019 credit report, a June 2020 credit report, or both credit reports. None of the accounts are identified in the SOR by name or account number. Four medical debts totaling about \$1,385 (SOR ¶¶ 1.n-1.q) are listed on the July 2019 credit report, but they are not listed on the two more recent credit reports. Two medical debts for \$924 and \$21 (SOR ¶¶ 1.b and 1.i) are listed on the June 2020 credit report, but not the March 2021 credit report. Four medical debts totaling about \$1,385 (SOR ¶¶ 1.e-1.h) are listed on every credit report. (GE 3-5)

Applicant stated that he contacted the collection company for the debts in December 2020. He asserted that he paid one debt and made payment arrangements for the other debts. He provided documentation of a \$30 payment in December 2020 and an agreement with the collection company to pay \$50 per month by credit card from January to April 2020. (Tr. at 32, 34, 38; AE A, F)

Applicant asserted that his finances are currently not perfect, but he and his girlfriend are paying their debts. She has a job and contributes to the household's finances. He is working a second job to help him pay his child support. (Tr. at 23, 39-40; Applicant's response to SOR; GE 1, 2)

Two witness testified on Applicant's behalf. His supervisor described him as an exemplary worker and an outstanding person. The witnesses praised Applicant's judgment, reliability, trustworthiness, and dependability. Applicant was arrested for alcohol-related driving offenses in 2012 and 2015, and he was arrested for non-alcohol-related driving offenses in 2017.<sup>1</sup> (Tr. at 18-22; GE 1, 2)

### **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.

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<sup>1</sup> Applicant's arrests were not alleged in the SOR, and they will not be used for disqualification purposes. They may be considered to place Applicant's character evidence in context, when assessing their effect on Applicant's financial situation, and under the whole-person analysis.

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 a Chapter 7 bankruptcy discharge, child support arrearages, a charged-off auto loan, unpaid medical debts, and 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 his 2005 divorce and the loss of income after he quit a job in July 2016 that he had held since 2009. He did not agree with the ethics and practices of the company's new management. His medical debts are copayments for his children that his ex-wife failed to bring to his attention. He left his job voluntarily, and his arrests had to have some effect on his finances. Applicant's financial problems were only partially beyond his control.

Applicant's child support payments are being garnished from his pay checks, which is standard in many child support cases. His monthly child support payments total \$1,935. Applicant's oldest child is 18 years old and not attending college, which means that his payments for that account should all go toward the arrearages. The March 2021 credit report lists one account as no longer past due.

Applicant paid or is paying the non-medical delinquent debts. His medical debts are a bit more difficult to decipher because they are not identified in the SOR by name or account number. He provided proof that he paid or is paying several medical debts, and the most recent credit report only lists four medical debts totaling about \$1,385. Applicant asserted that his finances are currently not perfect, but he and his girlfriend are paying their debts. She has a job and contributes to the household's finances. He is working a second job to help him pay his child support.

Applicant has 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, which is somewhat countered by his arrest history.

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.q:	For Applicant

### **Conclusion**

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

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Edward W. Loughran  
Administrative Judge