



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



In the matter of: )  
)  
) ISCR Case No. 20-03203  
)  
Applicant for Security Clearance )

**Appearances**

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

02/02/2022

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On April 6, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 April 29, 2021, Applicant answered 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), and Applicant received it on August 11, 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. (Item 1 is the SOR.) Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 2 through 9 are admitted into evidence. The case was assigned to me on November 4, 2021.<sup>1</sup>

### **Findings of Fact**

Applicant admitted the three SOR allegations with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He is a high school graduate. He served in the military from 2009 until he was honorably discharged in December 2014. He attended college from December 2014 until March 2017. He did not earn a degree. He was employed from March 2017 until August 2018, then began working with his present employer. Applicant married in March 2015. In his security clearance application (SCA), completed in June 2019, he disclosed he and his wife have been separated since November 2016. He confirmed to the government investigator during his background interview in August 2019 that they remain separated and are not divorced. (Items 3, 5)

In his SCA, Applicant disclosed that he had a delinquent credit card debt that he was "unable to pay due to divorce, other obligations." (Item 3) He stated the card became delinquent in May 2018, and he was working on a resolution with an agency. He further stated, "no action on repayment, due to recent job and obligations with divorce." During his background interview he confirmed to the government investigator that the debt in SOR ¶ 1.a (\$16,814) that he previously disclosed, was incurred while he was in the military. He said he was young and immature and overspent on his credit card. When he was discharged his income was reduced and the account became delinquent. He could not recall how much he owed or information about the account. He said he was working on a payment plan with the creditor and intended to pay the account. (Item 3, 5)

The government investigator confronted Applicant with other delinquent debts, including those alleged in SOR ¶¶ 1.b (\$8,373) and 1.c (\$5,553). Applicant told the investigator that the credit card debt alleged in SOR ¶ 1.b belonged to his wife, and he was only an authorized user. He did not know what type of payment arrangements she had for this account, but he stated if he was liable for the account, he intended to pay it. Applicant's credit reports from July 2019, October 2020, and July 2021, indicate that Applicant is the individual account owner for this credit card. (Items 5, 6, 7, 8)

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<sup>1</sup> The Government's Memorandum for the Administrative Judge indicated that Applicant submitted information, but there was none in the file. I contacted the Department Counsel, who confirmed this was an administrative error and that Applicant did not submit a response to the FORM or additional information. A copy of the email from the Department Counsel is included in the case file.

Regarding the debt alleged in SOR ¶ 1.c, Applicant told the investigator that he did not recognize this debt as belonging to him, but he would contact the creditor and if it belonged to him, he would satisfy it. (Item 5)

On March 13, 2020, Applicant received financial interrogatories from the DOD Consolidated Adjudications Facility (CAF). On that same day, Applicant contracted with a debt relief company (DRC) to settle the three debts alleged in the SOR. In response to the interrogatories, Applicant provided payment receipts for debts that were not alleged. He also provided a copy of the debt resolution agreement that reflected that the three alleged debts in the SOR were enrolled (\$30,720) in it. He is required to make bi-weekly payments of \$238 for 48 months. (Item 4) (Any derogatory information that was not alleged will not be considered for disqualifying purposes, but may be considered when applying mitigating conditions and in a whole-person analysis.)

Applicant's April 2021 answer to the SOR was a year after he indicated he had an agreement with the DRC. In it, he stated for SOR ¶ 1.a, "I admit, and I also have documents that support proof of payments." For SOR ¶ 1.b he said "I admit, and have proof of payment." For SOR ¶ 1.c he said, "I admit, and have proof of payment in full." In the FORM sent to Applicant, the Department Counsel noted that Applicant had yet to provide proof of satisfaction for his delinquent debt. Applicant did not respond to the FORM or provide any updated documents to support his statements. (Item 2)

A review of Applicant's July 2021 credit report reflects that the balance owed in SOR ¶ 1.a has been reduced by \$250 and the balance in SOR ¶ 1.b has been reduced by \$200. In addition, this credit report no longer shows the debt in SOR ¶ 1.c. No documentary evidence was provided to show this debt was paid, but based on his credit report, I find it is no longer an issue and find for Applicant on this allegation. (Item 8)

Applicant did not provide information about whether he has received financial counseling. In response to the interrogatories from March 2020, he provided a financial statement that included a list of his income and expenses, which included the payment to DRC. His expendable income at the end of each month was \$90. His financial statement did not reflect any payments to his estranged wife. He had no savings. (Item 2, 4).

### **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 handing 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 had three large debts alleged that are supported by his admissions and credit reports. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was aware that he had defaulted on the credit card in SOR ¶ 1.a. He indicated he was only an authorized user on the credit card in SOR ¶ 1.b, which was incorrect. He was the individual account holder. He said he was unaware of the third debt alleged in the SOR. In his SCA, he said his financial problems were the result of his divorce. According to his SCA, and Applicant's statement to the government investigator, he is not divorced, but is separated. His financial statement does not reflect that he is providing his wife support. He did not explain how his separation specifically impacted his finances. Applicant has been employed by his present employer since August 2018. He indicated in his SCA that he was working to resolve the credit card debt he disclosed. He reiterated this later when he was questioned by the government investigator. It was not until Applicant received government interrogatories, that he made an agreement with DRC. Applicant did not provide an explanation for his failure to address his delinquent debts until after he received the government interrogatories, despite being on notice that his finances were a concern. The timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 17-03229 at 4 (App. Bd. Jun. 7, 2019).

Applicant did not provide a response to the FORM that might shed light on his behavior and did not provide current documents to show that he is in compliance with the DRC. There is insufficient evidence that Applicant has participated in financial counseling. At this juncture, I cannot find that financial issues are unlikely to recur and that his behavior does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) do not apply.

Applicant's financial problems may have been somewhat beyond his control, but he failed to provide sufficient evidence to conclude his separation impacted his ability to pay his debts. He told the government investigator that his failure to pay his credit card was because he was young, immature, and overspent. This was within his control. AG ¶ 20(b) has limited application.

Applicant's most recent credit report does not show the debt in SOR ¶ 1.c. The FORM specifically notes that he had not yet provided proof of its satisfaction, highlighting Applicant's responsibility to provide evidence of his actions, if any. It is unknown if the debt was disputed and removed from the credit report, settled, or paid. After considering all of the evidence and that this debt was not over seven years old and would not have been removed from the credit report due to the statute of limitations, I find it is resolved and no longer a security concern.

I conclude that although there is some mitigation, it is insufficient to resolve the security concerns in Applicant's favor.

## 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 Guideline F in my whole-person analysis.

Applicant 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 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	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