



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



In the matter of: )  
)  
) ISCR Case No. 20-03425  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2022

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**Decision**

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PRICE, Eric C., 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 September 28, 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 October 4, 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) dated November 1, 2021. Applicant 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 3 through 7. Applicant submitted an undated response that is marked as Applicant Exhibit (AE) A, and two additional documents marked as AE B and AE C. There were no objections by Applicant or Department Counsel, and all exhibits are admitted into evidence. The case was assigned to me on February 1, 2022.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, and denied the allegation in SOR ¶ 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 62 years old. He served in the United States Marine Corps from 1977 to 1982, and served in the United States Air Force from 1982 to 2003, and reports he was honorably discharged. Applicant has been married since 2005, he was previously married from 1981 to 1999. He has six children (ages 31, 26, 15, 13, and twins who are 11). Applicant has worked as a facility protection manager for the same employer since 2010. (Item 3)

The SOR alleges four delinquent accounts totaling approximately \$49,113 including a mortgage foreclosure with a deficiency balance placed for collection (\$13,699), two charged off credit cards (\$35,293), and one credit account placed for collection (\$121). (Item 1)

Applicant completed a security clearance application (SCA) in February 2020. He reported a single financial issue, the foreclosure on an investment property estimated at \$200,000, that commenced in January 2016, and was resolved in January 2018. (Item 3)

Applicant was interviewed by government investigators on various dates in May and June 2020. During the May 2020 interview, he explained the foreclosure was a rental property he owned after suffering financial distress when renters left the home after the property was damaged by flooding from a broken hot water heater. Applicant said he could not afford to repair the property damage and that after he was unable to sell the property the bank foreclosed on, and sold the property in January 2018. He claimed the account was settled in full. Applicant also acknowledged that he had been delinquent on the debts alleged at SOR ¶¶ 1.a, and 1.c, but reported settling those debts in full in approximately 2017, after completing a 30-month payment plan. Applicant attributed those debts to living expenses while addressing foreclosure on his rental property. He acknowledged the delinquent debt alleged at SOR ¶ 1.d, but said he was disputing the debt with the creditor. (Item 4)

Credit records dated April 10, 2020, November 13, 2020 and November 1, 2021 reflect the four delinquent accounts alleged in SOR ¶¶ 1.a to 1.d totaling \$49,113 and foreclosure (\$273,010) on one of Applicant's two mortgages. These records report the last payment on the delinquent accounts alleged in SOR ¶¶ 1.a, and 1.c as September 2015. These credit records also reflect the debt alleged in SOR ¶ 1.b as an apparent deficiency balance of a mortgage account opened in April 2013, that went into foreclosure

in 2018 and closed in March 2019. The deficiency balance of the mortgage was placed for collection in September 2018 and the records do not reflect any payments on that deficiency balance. (Items 5, 6, 7)

In his undated Response to the FORM, Applicant asserted several delinquent accounts were removed from his recent credit reports and that only one delinquent debt remained. He submitted two credit reports dated December 6, 2021 which include no reference to the debts alleged at SOR ¶¶ 1.a, 1.c, and 1.d. Both credit reports reflect the delinquent debt alleged at SOR ¶ 1.b as placed for collection in September 2018 in the amount alleged in the SOR and no other delinquencies. One of the reports reflects Applicant's mortgage opened in April 2013 with regular payments through March 2018, delinquent starting in April 2018, and foreclosure in March 2019. Applicant did not report resolving the delinquent accounts alleged in SOR ¶¶ 1.a and 1.c and provided no documentary evidence of payments on any debt alleged in the SOR. (AE A, AE B, AE C)

Applicant has provided inconsistent and contradictory responses regarding whether the delinquent debts alleged at SOR ¶¶ 1.a, 1.b, and 1.c have been resolved. He reported no delinquent accounts in his SCA, claimed the debts alleged at SOR ¶¶ 1.a and 1.c were resolved in approximately 2017, and denied owing the debt alleged at SOR ¶ 1.b during background interviews, but in response to the SOR he admitted all three debts remained delinquent in the amounts alleged. (Items 2, 3, 4)

Applicant claimed he disputed the delinquent account alleged at SOR ¶ 1.d because this account was a double billing for a fee that had been paid. His credit records from April 2020 reflect Applicant disputed this account and credit records from November 2020, November 2021, and December 2021 include no reference to this account. Although, Applicant failed to provide other documentary evidence, and this debt may have fallen off his credit report for other reasons, I have given him credit for his corroborated explanation that he disputed this debt and find in his favor on SOR ¶ 1.d. (Items 2, 4, 5, 6, 7, AE A, AE B, AE C)

Applicant did not provide specific evidence of his current financial budget, savings or expendable income. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. However, it may be considered in the application of mitigating conditions and in a whole-person analysis.

### **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 common sense 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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
- (b) a history of not meeting financial obligations.

Applicant has a history of financial problems dating back to at least 2015. Applicant admitted the delinquent debts alleged in SOR ¶ 1.a, 1.b, and 1.c. He has provided no evidence of payment on these debts or that the debts have been resolved. 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.

Applicant attributes his financial issues to loss of rental income from an investment property after flooding caused by a broken water heater damaged the home. He said he could not afford to repair the damages or make mortgage payments, was unable to sell the property, and that the mortgagee then foreclosed on the property. He attributes other delinquent debts to living expenses incurred while addressing the foreclosure.

Applicant incurred the debts alleged at SOR ¶¶ 1.a, 1.b, and 1.c. from 2015 through September 2018. He did not provide evidence that he has made any payments on, or otherwise resolved these debts. That some of the debts have dropped off recent credit reports is not meaningful evidence of debt resolution. See ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). “Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved.” ISCR Case No. 16-02941 (App. Bd. Dec. 12, 2017) (citations omitted). His conduct casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Lost rental income due to water damage to an investment property from a broken hot water heater constitutes a condition beyond Applicant’s control. However, Applicant has produced no documentary evidence he acted responsibly under the circumstances. There is no evidence Applicant contacted the creditors or made a payment on the delinquent accounts alleged at SOR ¶¶ 1.a or 1.c since 2015, or that he has communicated with the creditor or made any payment on the debt alleged at SOR ¶ 1.b. AG ¶ 20(b) partially applies.

There is also no evidence he has received financial counseling or has a budget. It remains difficult to determine why he has not verifiably attempted to resolve his delinquent accounts over the years, especially after the significance of them in the security clearance eligibility process was made known to him. Despite being aware of the significance of the government’s financial concerns, Applicant failed to take appropriate action. Applicant’s conduct under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09- 08533 at 3-4 (App. Bd. Oct. 6, 2010). AGs ¶¶ 20(c) and 20(d) do not apply.

AG ¶ 20(e) applies to the debt alleged at SOR ¶ 1.d. I have given Applicant credit for his corroborated explanation that he disputed this debt and find in his 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered that Applicant is 62 years old, has worked as a facility protection manager for the same employer since 2010, and that there is no evidence of any additional delinquent accounts since 2018. I also considered that he was honorably discharged in 2003 after serving approximately 26 years in the United States Armed Forces.

Applicant accumulated three delinquent debts totaling approximately \$48,992 from 2015 to 2018 and has not produced sufficient evidence of payment on these debts. Applicant admitted all three debts remained delinquent in the amounts alleged in the SOR. 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 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.c:	Against Applicant
Subparagraph 1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric C. Price  
Administrative Judge