



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



In the matter of: )  
)  
) ISCR Case No. 19-03717  
)  
Applicant for Security Clearance )

**Appearances**

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

02/22/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 18, 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 March 31, 2020, and requested a hearing before an administrative judge. The case was assigned to me on June 2, 2021.

The hearing was scheduled for August 11, 2021, but was continued at Applicant's request. The hearing was convened as rescheduled on February 4, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) 1 and 2, which were admitted without objection.

## Findings of Fact

Applicant is a 67-year-old chief executive officer and owner of a consulting company. He served on active duty in the U.S. military from 1977 until he was honorably discharged in 1992. He served in the Reserve from 1992 until he retired as a senior officer in 2005. He has a 100% disability rating from the Department of Veterans Affairs, for which he receives disability pay. He has a bachelor's degree and a master's degree. He is married without children. (Tr. at 17-18, 35-38; Applicant's response to SOR; GE 1, 2; AE 1)

Applicant had a friend who was also a business associate. In about 2015, the friend was unable to lease an expensive luxury car on his own. He was able to lease the car with Applicant's assistance. It is not completely clear whether Applicant signed the lease by himself; if he cosigned the lease with the friend; or if he cosigned the lease with his consulting company. The friend was supposed to pay for the lease. Whichever scenario it was, Applicant guaranteed to pay the lease if his friend did not. (Tr. at 19-32; Applicant's response to SOR; GE 1-6)

Applicant's friend did not maintain the payments, and in about 2016, Applicant had to pursue legal action to coerce him into returning the car to the leasing company. The car was sold at auction, leaving a deficiency of about \$33,455, for which Applicant admits he is liable. (Tr. at 19-32; Applicant's response to SOR; GE 1-6)

Applicant reported the debt on a Questionnaire for National Security Positions (SF 86) he submitted in February 2019. He was interviewed for his background investigation in March 2019. He told the investigator that he arranged with the leasing company to pay the debt in April or early May 2019. In his March 2020 response to the SOR, Applicant wrote: "our legal team are in the process of taking legal actions against Mr. [friend/business associate] to resolve this indebtedness issue." (Tr. at 32; Applicant's response to SOR; GE 1, 2)

Applicant has not made any payments toward the debt. He testified that his lawyers are working on a lawsuit against his former friend to obtain a judgment that will be used to pay the debt. He stated that his company has had some financial setbacks related to the COVID-19 pandemic. He also stated that he had hip replacement surgery and other medical issues that left him unable to work for extended periods. He asserted that he intends to pay the debt. (Tr. at 16, 32-39; GE 1-6)

Applicant had an exemplary military career, as evidenced by his many awards, medals, and commendations. He submitted letters attesting to his strong moral character. He is praised for his reliability, honor, dependability, work ethic, patriotism, honesty, loyalty, responsibility, generosity, leadership, trustworthiness, professionalism, and integrity. The authors recommend him for a security clearance. (AE 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.

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 is potentially applicable in this case:

(b) unwillingness to satisfy debts regardless of the ability to do so.

It is not completely clear whether Applicant signed the lease by himself; if he cosigned the lease with the friend; or if he cosigned the lease with his consulting company. The friend was supposed to pay for the lease. I believe the most likely scenario is that Applicant cosigned the lease with the friend. Under any of the scenarios, Applicant guaranteed to pay the lease if his friend did not, and he is personally liable for the deficiency balance of the lease. This matter has gone on for so long, I conclude that Applicant is unwilling to pay the debt. AG ¶ 19(b) is applicable.

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's friend defaulted on the auto lease and refuses to pay the deficiency. That was beyond Applicant's control, but it should not have been surprising to Applicant. There is a reason why the friend could not lease the car on his own, and why the leasing company refused to lease the vehicle without a cosigner. Cosigning for a friend who had bad credit was a questionable decision, but Applicant chose to do so in spite of all the reasons not to. He has to accept the consequences of that poor choice.

Applicant and his company had some recent COVID and personal-health reasons that had an effect on his ability to repay the debt. However, this issue is years old; Applicant has asserted since 2019 that he intends to pay the debt; and he has paid nothing. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

In the absence of any payments by the friend, the debt is clearly Applicant's responsibility. Applicant does not have a track record that would enable me to project with any degree of certainty that he will pay the debt. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay the debt. His refusal to pay the debt casts doubt on his current reliability, trustworthiness, and good judgment. There are no applicable mitigating conditions.

### **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 honorable military service and favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.<sup>1</sup>

### **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
Subparagraph 1.a:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge

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<sup>1</sup> The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as the issue in this case is not partially mitigated.