



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



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 21-01169

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2022

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 30, 2020. (Item 3.) On July 15, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. (Item 1.) The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on July 27, 2021 (Item 2), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on September 17, 2021. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 10. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's evidence. He received the FORM on October 20, 2021, but he did not respond to the FORM. The case was assigned to me on January 6, 2022.

### **Findings of Fact**

Applicant, age 49, is separated from his wife but not divorced. Since 2017, he has lived with his girlfriend. He has three children. Applicant honorably served from 1991 until he retired from active duty in the U.S. Army in 2011. He obtained his undergraduate degree in May 2014. He has been employed with his current employer since August 2016. Applicant reported no unemployment. He works full time as an instructor for a federal contractor. He does not currently hold a security clearance, but held a clearance in the military. (Item 3).

The Statement of Reasons (SOR) sets forth security concerns under Guidelines F and E. Guideline F (Financial Considerations) lists a 2019 court judgment and 11 financial delinquent debt allegations, SOR 1.a through SOR 1.i totaling about \$139,210. (Item 4, 5) Under Guideline E, the SOR alleges Applicant was arrested in 2018 for domestic violence and investigated for criminal damage to property in 2020.

### **Financial**

In his Answer to the SOR, Applicant admitted to the 2019 court judgment and eight of the delinquent debts. (Item 2) His most recent credit bureau report in September 2021, contains nine accounts in collection or charged off for approximately \$70,920. (Item 4) The delinquent debts also included his mortgage account with about \$6,255 past due. (Item 5) He stated that some accounts are duplicates and that he is making payments on several accounts, and that he hired a debt management company to assist him in resolving his delinquent debt. (Item 2)

Applicant has been employed since 2011, with no recorded breaks in employment. He had the same job since 2016 and before that, the same job since 2011. He was not laid off unexpectedly. Applicant's prior security clearance application in 2013 show financial issues. His wife at that time went to a credit counseling service in 2014, which handled multiple financial accounts. (Items 8, 9)

As to SOR 1.a, in the amount of \$4,728, for a 2019 judgment, Applicant admitted that he believed it had been paid. He submitted a document from the debt management company showing he settled the debt for \$1,575 on June 14, 2021.

As to SOR 1.b, in the amount of \$34,420 for a collection account, Applicant admitted and claimed that he pays \$600 a month on the account. He did not provide any documentation. Applicant's 2021 credit report reflect the debt as charged off. (Item 4)

As to SOR 1.c, in the amount of \$13,500 for a charged-off account Applicant stated that he pays \$300 a month with a direct withdrawal. He did not provide any documentation.

As to SOR 1.d, in the amount of \$8,505 for a charged-off account, the account is with the debt management company. Applicant intends to pay this bill in the future.

As to SOR 1.e, in the amount of \$6,527 for a charged-off account, he denied because it had been paid in June 2021.

As to SOR 1.f, in the amount of \$3,946, for a charged-off account, he admitted and stated that this account is with the debt management company. The account is reflected on his 2021 credit bureau report as charged off. (Item 4)

As to SOR 1.g, in the amount of \$2,339, for a charged-off account, Applicant denied because it is a duplicate of the account in SOR 1.h to the same creditor. He is paying on this account monthly. This account 1.h does appear to be a duplicate.

As to SOR 1.i, in the amount of \$12,477, for a charged-off account. Applicant admitted and stated that this account is with the debt management group.

As to SOR 1.j, in the amount of \$5,747, Applicant believed it was paid through the debt management company. It is reflected on the latest credit bureau report with a zero balance. (Item 4)

As to SOR 1.k, in the amount of \$38,795, Applicant denied this account and stated it was a duplicate of SOR 1.b. This appears to be accurate because the latest credit report shows it was transferred to another account and had a zero balance. (Item 4)

As to SOR 1.l, for a mortgage account that is past-due in the amount of \$6,255, with a total balance of \$194,327, Applicant admitted that he is working with the bank currently processing paper work again. He stated that he had a payment that was late in June. He did not provide the year in his answer.

Applicant submitted documents from the debt management company that showed he has paid money to them since at least 2016. The documents do not identify which accounts received the money. but do not identify which accounts the money was applied.

In Applicant's 2020 security clearance application, (SCA) he reported that he paid his spouse's and his bills in full in March "2023" through the debt management company. (Item 3), and that he had no financial problems. It is not clear from the record which accounts he refers to with this statement. (Item 3) The accounts that he mentioned in his SCA that he is paying, do not match the alleged account on the SOR. However, his 2020 credit bureau report (Items 5, 6) reflected other non-alleged SOR accounts "pays as agreed." Applicant's 2013 credit bureau report (Item 9) shows all accounts as "pays as agreed."

Applicants 2020 subject interview revealed that his financial problems began in 2016, after his spouse lost income, reducing the overall family income by approximately \$40,000. He used credit cards to supplement the income. He stated that he was supporting two households. He stated that he would pick and choose which bills to pay.

Applicant stated that he was naïve regarding finances and allowed balances to increase beyond his ability to repay. He attempted to negotiate, but most creditors refused to negotiate. (Item 10) He sought loans to consolidate debts, sought credit counseling in 2016 in lieu of bankruptcy and entered into an agreement with the current debt management company. (Item 10) He told the investigator that he pays the debt company \$700 monthly, with a \$500 service fee, which is dispersed to creditors.

Applicant listed the above delinquent debts with his debt consolidation company. However, it is not clear from the record which accounts have been settled or paid. (Item 10) Applicant told the investigator that his financial issues are slowly improving, but he continues to struggle financially. He has a budget, and he intends to have all delinquent accounts paid by 2023.

Applicant's net monthly salary is \$4,480; his military retirement is \$600; VA disability \$3,492; and his co-habitant's net monthly income is \$1,000 for a total of \$9,572. (Item 10) He listed the accounts alleged in the SOR that are currently with the debt management company. He listed his monthly discretionary funds after expenses and debts as \$1,324. (Item 10)

Applicant reported real estate totaling \$236,000 and \$187,000; liquid assets of \$1,924; a car valued at \$15,000; a recreational vehicle for \$8,000; with a total a value of non-liquid assets in the amount of \$446,000. He promised the investigator that he would provide personal bank statements for the investigation, but he did not. (Item 10)

### **Personal Conduct**

As to SOR 2.a, it was alleged that in March 18, 2018, Applicant was arrested and charged with Domestic Violence and Criminal Damage to Property. The charges were dismissed. Applicant admitted this allegation.

As to SOR 2.b, it was alleged that Applicant was investigated in April 2020 for Criminal Damage to Property and was referred for prosecution. Applicant denied this allegation as he filed charges against the victim. In addition, he wrote a statement regarding the person responsible.

Applicant disclosed in his 2020 security clearance application that he was accused of domestic violence in 2018 due to an altercation with his cohabitant. He related she was drinking and in the situation, he had broken a picture of his own. He pleaded innocent, went to trial and case was dismissed because he was getting his girlfriend help with her drinking disorder and also counseling. (Item 3)

Applicant was investigated for property damage, but he volunteered during his 2020 subject interview that his girlfriend had consumed a "large amount of alcohol." Applicant left the residence to de-escalate the situation and when he returned he discovered damage in the residence. Applicant made a walk-in report to the police and his cohabitant was charged with criminal damage to property. (Item 10)

The record file contained no police report or other criminal documents to support the above allegations against the Applicant. The Government conceded in its argument in the FORM that the record evidence does not support the allegation under SOR 2.b for personal conduct.

### **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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 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, AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of 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.

AG ¶ 20(a) is partially established. Applicant and his wife separated in 2016 and he lost \$40,000 of family income. He does not live with her and will get divorced. He has many accounts on his 2020 credit bureau report that show he “pays as agreed.” (Item 5) His earlier credit reports also show many accounts “pays as agreed.” (Item 9)

AG ¶ 20(b) is not fully established. While Applicant’s separation was a condition beyond his control, he has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are established. Applicant responded to the SOR and provided documentation of obtaining the services of a debt consolidation company. The documentation did not show all the accounts that were in the plan. but his debt has been reduced to \$70,920. While this is not an insubstantial amount of money, he is gainfully employed and has been paying his creditors. He has taken credit counseling.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR for lack of sufficient evidence and documentation. For these reasons, I find he has not fully mitigated the security concerns under the financial considerations guideline..

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official

representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged domestic violence charge and an investigation into Criminal Property damage the following disqualifying condition applies:

AG ¶ 16 (c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant admitted the domestic violence event. He was dealing with a woman who had been drinking. He left the residence to de-escalate the issue. When he returned, he found the residence damaged. He made a report to the police. Applicant disclosed the event, he went to trial and the case was dismissed. His wife was charged with Criminal Property Damage.

In this instance, it is clear from Applicant's comments that therefore, AG ¶ 16(a) is not established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;



(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the mitigating conditions outlined above, the Government has not provided evidence to refute Applicant. The Government even conceded that SOR allegation was not supported by the evidence. There was no police record in the file. SOR AG 2.a and 2.b are found in Applicant's favor.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including his honorable military service, I conclude that Applicant is on a path toward financial solvency but has not established a sufficient track record. As to security concerns under personal conduct, Applicant has a favorable outcome.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-c:	For Applicant
Subparagraphs 1d-1.g:	Against Applicant
Subparagraphs 1.i-k:	For Applicant
Subparagraphs 1.l:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a-2.b:	For Applicant
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### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information under the financial consideration guideline. The personal conduct security concerns are mitigated. Clearance is denied.

Noreen A. Lynch  
Administrative Judge