



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



In the matter of: )  
)  
) ISCR Case No. 20-02519  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

04/04/2022

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**Decision**

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HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 9, 2020. On June 11, 2021, 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 October 22, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On November 23, 2021, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1 - 4. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 14, 2021. As of January 19, 2022, he had not responded. The case was assigned to me on February 28, 2022. Since Applicant did not respond to the

FORM, he did not submit any evidence after submitting the answer to the SOR, nor did he offer any objection to the government's evidence.

Item 1 is comprised of the SOR and Applicant's Answer, which are the pleadings in the case. Item 2 is his 2020 SCA. Item 3 is a summary of his April 2020 interview with a government investigator. Item 4 is a February 2020 credit report. Items 2 – 4 are admitted without objection

### **Findings of Fact**

In his Answer, Applicant admitted SOR ¶¶ 1.a – 1.c, and denied SOR ¶¶ 1.d – 1.f. He did not provide any explanation addressing the SOR allegations, or documentary evidence along with his Answer. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 40 years old. He has been employed as a program manager by a defense contractor since 2019. This is his first application for a security clearance. He earned a bachelor's degree in 2005, and a law degree and an MBA in 2016. He has been steadily employed since 2000, and was working full time while he was attending school. (Item 2)

In his background interview, Applicant stated that some of his debts became delinquent in 2017 because he was helping his mother pay her mortgage and bills, approximately \$800 - \$1000 a month. His father had passed away three years prior, in about 2014. He prioritized helping her with her finances over his own debt payments. He asserted that he is still paying \$400 - \$500 monthly for his mother's expenses. He also cited the high cost of living, inflation, and his lack of pay raises and cost of living adjustments as other reasons for his financial troubles. (Item 3)

The SOR alleges six delinquent debts, totaling approximately \$38,000. Five of these debts are charged off, and one is in collection status. The allegations are established by Applicant's admissions and the 2020 credit report. Applicant did not provide any documentation to show the current status of the SOR debts. (Items 1, 2, 3, 4) The status of the debts follows:

SOR ¶ 1.a is an education loan that is in collection in the amount of \$17,160. The date of last activity on the account was January 2017. As noted above, Applicant stated in his background interview that that he prioritized other expenses and helping his mother, over this debt. He hopes to make payment arrangements when he has a better paying job. (Items 1, 2, 3, 4)

SOR ¶ 1.b is a student-loan debt that was charged off in January 2018, in the amount of \$11,032. Applicant stated in his background interview that he called the creditor to reestablish payments, and that he has been paying \$110 monthly. However, he provided no substantiating documentation. (Items 1, 2, 3, 4)

SOR ¶ 1.c is an auto loan that was charged off in January 2018, in the amount of \$3,917. He stated in his background interview that when this account became delinquent in 2017, he made partial payments for about eight months, but then stopped because he could no longer afford to do so. He claimed that he contacted the creditor in 2020 after receiving a notice in the mail about the debt. He was waiting on the creditor to send him a payment plan, and said he intends to start making payments on this debt. (Items 1, 2, 3, 4)

SOR ¶ 1.d is a credit card that was charged off in September 2019, in the amount of \$2,804. In his background interview, he gave the reason for the financial issue as the high cost of living. He claimed that he set up a payment plan with the creditor in late 2019, approximately \$200 monthly, however, he provided no substantiating documentation. (Items 1, 2, 3, 4)

SOR ¶ 1.e is a credit card that was charged off in February 2020, in the amount of \$1,425. In his background interview, he said the reason for the financial issue was because of Inflation, and because he did not receive a pay raise or cost of living adjustment. He claimed that he called the creditor in 2020 after receiving a notice about the debt in the mail. He was waiting on the creditor to send him a payment plan, and intends to start making payments on this debt. (Items 1, 2, 3, 4)

SOR ¶ 1.f is a credit card that was charged off in August 2019, in the amount of \$1,421. In his background interview, he said the debt was due to helping his mother, increased expenses due to inflation, and not receiving a pay raise. He claimed that he called the creditor after receiving a notice about this debt in late 2019. He was waiting on the creditor to send him a payment plan, and intends to start making payments on this debt. (Items 1, 2, 3, 4)

Since he did not provide any documentation with his Answer, and did not respond to the FORM, Applicant did not provide any documentary evidence showing that any of his debts have been or are being paid, disputed, or otherwise resolved. He also submitted no documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He provided no evidence of credit counseling.

### **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 are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations;

The SOR debts are established by the credit report in the record, and Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not provide sufficient evidence to establish that AG ¶ 20(a) should apply. He did not provide any documentation that any of his debts have been or are being paid, or otherwise resolved. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His debts are recent, not isolated, and are unresolved. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant is given consideration under AG ¶ 20(b). Assisting his mother with her finances, after his father died, had an impact on his finances. While he started helping his mother in 2017, the record shows that some of debts became charged off more than two years later. The record shows that his debts are unresolved, and he did not provide sufficient evidence to show that he undertook responsible action to address them. Therefore, AG ¶ 20(b) does not fully apply.

Similarly, Applicant did not provide sufficient evidence that he has undertaken good-faith efforts to address his debts. He gave insufficient evidence that any of his debts have been or are being paid, and provided no documentation of any payments towards them. AG ¶ 20(d) does not apply.

### **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 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.

There is insufficient evidence to conclude that Applicant's financial problems will not recur, or that these debts will be resolved within a reasonable period. Some of Applicant's debts have been delinquent for over five years. He did not provide documentation showing that he made reasonable efforts to resolve them. His financial issues are recent and ongoing. I am unable to find that he acted responsibly under the circumstances, or that he made a good-faith effort to pay his debts.

Since Applicant did not request a hearing, I did not have the opportunity to question him about his financial issues, or to assess his credibility by observing his demeanor. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's delinquent debts under Guideline F. My decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

## **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.f:                      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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Ross D. Hyams  
Administrative Judge