



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



In the matter of: )  
)  
) ISCR Case No. 20-00545  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

02/23/2022

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated to the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 8, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on December 15, 2021. After coordinating with Applicant, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 10, 2022, scheduling the hearing for January 26, 2022.

The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits A through K. There were no objections to any exhibits and all were admitted into evidence. The record was held open until February 15, 2022, to allow Applicant to submit additional documents, which he did. They are marked as AE L through T. There were no objections and the exhibits were admitted into evidence. DOHA received the hearing transcript on February 4, 2022.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.c and 1.d and denied the allegations in ¶¶ 1.a and 1.b. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He earned an associate's degree and is attending college. He needs to complete five classes to be awarded a bachelor's degree. He married in 2013 and has two grown stepchildren. He enlisted in the Army Reserve in July 2014 and is a sergeant (E-5). He has been employed by a federal contractor since 2017. He has no periods of unemployment and has worked since he was 16 years old. (Tr. 19-23; GE 1)

After graduating from high school in 1998, Applicant attended college, but quit for periods of time to take care of his grandmother and later his mother. His grandmother passed away in 2015 and his mother in 2019. He funded his college education with student loans. (Tr. 20-23)

Applicant's annual income is about \$55,000. He estimated from his Army Reserve training he earns about \$3,000 annually. His wife is employed with a state agency and earns about \$31,000. (Tr. 23-25)

Applicant explained that in approximately 2016 his wife had medical issues that required surgery and she was out of work. She received disability payments, but it was insufficient for them to continue to pay all of their expenses, and they fell behind. Applicant started a new job in 2017, and he was able to address bills that had fallen behind. His wife also resumed work. They made double payments to catch-up on bills. He testified that the creditors agreed to accept his payments to resolve his debts. (Tr. 26-27)

Credit reports from April 2019 and January 2020 and admissions during Applicant's background interview with a government investigator corroborate the SOR allegations. (GE 2, 3, 4)

The debt alleged in SOR ¶ 1.a is a charged-off car loan (\$18,444). Applicant testified after he got behind paying this loan, he contacted the creditor and it agreed to accept payments. He said he was making three payments a month, and he was able to place the debt in good standing, but it still showed as charged off on his credit report. Applicant provided documents to show the debt has been paid in full. The debt is resolved. (Tr. 26-29; AE F, O)

The debt alleged in SOR ¶ 1.b (\$327) is from Applicant's credit union account. He believed that there was some type of glitch and a bill did not get paid through his account and perhaps this was an overdraft. When he learned of the problem, he resolved it with the credit union. He provided documents to show that his accounts with this credit union are in good standing. This debt is resolved. (Tr. 30-32; AE P, Q, R)

The debts in SOR ¶¶ 1.c and 1.d (\$30,071 and \$21,217) are delinquent student loans. Applicant testified that he was paying one student loan and did not realize that there were actually two of them. He contacted the creditor to have them consolidated. Applicant provided documents to show he had been making payments on a student loan since 2016. He also provided a document from the Department of Education from December 2020 confirming a repayment plan agreement. He is required to pay \$179 monthly. He provided documents showing payments. His student loans are now deferred because of the pandemic. He testified that he is making sure his finances are in order for when payments resume. He hoped to restart paying the loans before the deferment expired. (Tr. 31-37, 42-45; AE B, M, N, T)

Applicant is participating in a program through the military that assists him in repaying his student loans. The total amount he is eligible to receive is \$30,000. By contracting to serve three more years in the Army Reserve, he became eligible to receive \$20,000. He reenlisted to serve six years. The \$20,000 payment is applied directly to his student loan balance. Applicant completed his first enlistment and the loan repayment will be paid during his current enlistment. He testified that he has applied for it and is waiting for it to be disbursed. He is also eligible to receive another \$10,000 in the future after he completes the term of his enlistment. He provided the corroborating documents. (Tr. 37-42, 47-49; AE A, C)

In 2019, Applicant applied for a public service loan forgiveness employment program. It requires that he make consistent student loan payments for ten years at which time the balance of his student loans will be forgiven. He qualifies through his military service. The payments are stayed during the pandemic deferment period. Applicant must have his public service employment recertified by his employer each year. Applicant provided corroborating documents. (Tr. 40, 45-50; AE D, E, H, J)

Applicant has had a part-time job since 2019 to increase his income and pay unexpected expenses. He works about 20-25 hours a week. He and his wife purchased a house in February 2021. He credibly testified that he can afford all of his expenses. He contributes to a 401(k) pension plan and has some money in savings. He and his wife maintain a written budget. Most of their bills are paid automatically each month. (Tr. 50-55)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

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 two delinquent debts and student loans that were unresolved. 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 attributed his financial problems to a period in 2016 when his wife had medical issues and needed surgery. She was on disability and the decrease in their household income impacted their ability to pay some of their bills. These issues were beyond Applicant's control. Applicant started a new job in 2017 and with his wife resuming work, they caught up on their bills. Applicant provided documents to show the debts in SOR ¶¶ 1.a and 1.b are resolved. Applicant acted responsibly under the circumstances. AG ¶ 20(b) applies.

Regarding Applicant's student loans, he provided documents to show he was making payments since 2016, but was confused and unaware that he had two loans. He consolidated them and is in a repayment plan. He is also eligible and is participating in a loan repayment program through the military. He already has qualified for a disbursement of \$20,000 that will be applied to his student loan debt. He will be eligible, in the future after completion of additional service, for an additional \$10,000 to be applied to his student loan debt. Applicant has also applied for a public service loan forgiveness employment program. He must make consistent payments on his student loans for ten years, at which time, the balance will be forgiven. Applicant works a part-time job to cover unexpected expenses. He and his wife keep a written budget and pay their bills on time.

Applicant provided sufficient evidence to conclude there are clear indications that his financial issues are under control. He has a repayment plan for his student loan debt. He has qualified to receive \$20,000 to be applied to his student loan debt. He is also participating in a loan forgiveness program that requires he make consistent payments over a ten-year period, at which time, the balance will be forgiven. I find all of the above mitigating conditions 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 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.

Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising 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: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge