



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



In the matter of:	)	
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	)	ISCR Case No. 21-01833
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Benjamin R. Dorsey, Esquire, Department Counsel

For Applicant:  
*Pro se*

April 28, 2022

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 2, 2020. (Item 3.) On August 26, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on September 15, 2021, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer Applicant admitted all three allegations in the SOR with explanations. On October 20, 2021, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on October 26, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on November 19, 2021. Department Counsel had no objection to the additional information, and it is admitted into evidence as Applicant's Exhibit A. Items 1 through 6 are also admitted into evidence. The case was assigned to me on February 1, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 62 years old and married to his second wife. He has two children and one stepchild. Applicant has a bachelor's degree. He has been employed by a defense contractor since September 2019 as a Manager and seeks to obtain or retain national security eligibility and a security clearance in connection with his employment. (Item 2 at Sections 13A, 15, and 17.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations under this guideline.

The SOR alleged that Applicant has three debts that are past due, charged-off, or in collection, in the total amount of approximately \$39,000. The existence and amount of these debts is supported by his admissions to all SOR allegations in his Answer and by credit reports dated November 25, 2020; and April 17, 2021. They are also confirmed by Applicant's answers during an interview with an investigator from the Office of Personnel Management (OPM) held on December 11, 2020. (Items 4, 5, and 6.)

Applicant stated that his financial difficulties were related to his wife's health. Starting in approximately 2016, Applicant's wife underwent six surgeries in an unsuccessful effort to save the sight in one of her eyes. Only one of the surgeries was covered by insurance. In order to assist her during this struggle Applicant left his job and was unemployed for over three years, until he obtained his current employment. (Answer; Item 3 at Section 26; Item 4.)

In addition to her eye issues, Applicant's wife also required substantial dental work. According to Applicant, this work was medically necessary but also not covered by insurance. (Answer.)

1.a. Applicant admitted owing a past-due credit card account that was placed for collection in the amount of approximately \$21,714. As of November 21, 2021, Applicant had not made any attempt to resolve this debt. In Applicant Exhibit A he stated, "I fully intend to work with the listed company, Cavalry Portfolio Service to settle these debts." No further information was provided. This debt is not resolved.

1.b. Applicant admitted owing a past-due credit card account that was placed for collection in the amount of approximately \$16,178. As of November 21, 2021, Applicant had not made any attempt to resolve this debt. In Applicant Exhibit A he stated, "I fully intend to work with the listed company, Cavalry Portfolio Service to settle these debts." No further information was provided. This debt is not resolved.

1.c. Applicant admitted owing a charged-off debt to a cell phone provider in the amount of \$1,145. Applicant made a payment arrangement with the successor creditor and paid the debt in full in July 2021. This is confirmed by documentation from the creditor. (Applicant Exhibit A.) Accordingly, this allegation is found for Applicant.

Applicant submitted no information concerning his current income or debts. He submitted no documentation detailing his plans for resolving the remaining past-due indebtedness.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 Executive Order 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has incurred over \$39,000 in past-due indebtedness over the last several years. He paid one of the debts alleged in the SOR. (SOR allegation 1.c.) However, the remaining two debts, totaling almost \$38,000, are unresolved. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or 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.

As stated, Applicant provided evidence showing he had resolved the \$1,145 debt set forth in SOR allegation 1.c. Accordingly, that allegation is found for him.

The evidence does not establish that any of the above mitigating conditions apply to Applicant's other two debts. Applicant's wife's medical issues, and his reasonable reaction to them, obviously had a serious impact on his finances. Those facts have been considered. However, that is only one part of the equation. Applicant did not provide any evidence showing that he is engaging in a good-faith effort to responsibly resolve the two remaining debts. A statement that he intends to work with the collection agency is not sufficient. As also stated, Applicant did not submit any financial information from which I can make a finding that he is capable of avoiding additional delinquencies or resolving these debts in a reasonable, responsible, and timely fashion. Paragraph 1 is found against Applicant.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns over his considerable past-due indebtedness. The potential for pressure, exploitation, or duress remains substantial. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance at the present time.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.b:	Against Applicant
Subparagraph 1.c:	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge