



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00610  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/09/2022

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 10, 2021, the Defense Counterintelligence and Security Agency 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On December 13, 2021, Applicant’s answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 4, 2022. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 3 through 11. (Item 1 is the SOR and Item 2 is the transmittal letter) Applicant submitted a timely response to the FORM. His documents were marked Applicant's Exhibits (AE) A through E. There were no objections to any evidence offered. All Items and AE A through E are admitted into evidence. The case was assigned to me on March 2, 2022.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.d, and 1.e, and denied 1.b, 1.c, 1.f, 1.g, and 1.h. His admissions are incorporated in the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. He was married from 2010 to 2013. He remarried in 2018. He has a nine-year-old child from a relationship. He served in the military from 2009 to 2015 and received an honorable discharge. He has been steadily employed since his discharge from the military. He has worked for a federal contractor since February 2019.

The SOR alleges eight delinquent debts totaling approximately \$67,887. Applicant admitted in his answer to the SOR that he owed the debts in ¶¶ 1.a (\$17,307), 1.d (\$11,712) and 1.e (\$7,906). He denied owing the debts in SOR ¶¶ 1.b (\$13,227), 1.c (\$13,062), 1.f (\$3,247), 1.g (\$1,187) and 1.h (\$239). All the delinquent debts are corroborated by Applicant's admissions in his security clearance applications (SCA) from May 2015 and March 2020; statements made to government investigators in May 2015, June 2015, and June 2020; credit reports from January 2022, May 2020 and May 2015; and his answer to the SOR and response to the FORM. (Items 3, 4, 5, 6, 7, 8, 9, 11; AE A)

Applicant attributed his financial problems to his 2013 divorce and a period when he was transitioning from the military to civilian life from 2015 to 2016. In his SOR answer, he stated he was forced to decide between satisfying his financial obligations and paying for necessities, such as food and rent. He further stated that since the period of his financial difficulty, he has lived within his means, purchased a house, supported his family, and is paying his financial obligations. (Item 3)

Applicant completed a security clearance application (SCA) in June 2010. In it he disclosed he had accounts or credit cards suspended, charged off, or cancelled for failing to pay as agreed and had been 180 days delinquent on debt(s). He noted that for most of the debts he was making payments on, he had reached a settlement, was pending a settlement, or he was disputing.<sup>1</sup> (Items 9, 10)

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<sup>1</sup> Any derogatory information that was not alleged will not be considered for disqualifying purposes, but may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

In May 2015, Applicant completed another SCA. In it he did not disclose any financial delinquencies under section 26. (Item 7) In the final remarks section he stated:

I [have had] a large amount of debt in the past. I am currently working as hard as I can to clean up my financial state and am making significant headway. I am also currently transitioning from Active Duty Military status to a civilian life. My debts have piled up once again but I fully anticipate to be fully up to date on my debts and payments by [2015-09-01] due to my increased income and lower financial responsibilities. (Item 7)

In July 2015, Applicant was interviewed by a government investigator. He was asked about a judgment that he began making payments on in 2009 and indicated he would look into it and resume payments in 2016. He was confronted with the debt alleged in SOR ¶ 1.a (creditor-ABC), and he explained it was a credit card debt. He used the credit card in the past few years to pay for whatever his needs or wants were. He fell behind due to moving and other expenses. He planned to contact the creditor and make the bill current. He was also asked about SOR ¶ 1.e. He explained it was for a loan he obtained in 2014 from ABC. He did not offer any other information about this loan to the investigator. (Item 11)

The government investigator confronted Applicant with four debts to the same creditor (SOR ¶¶ 1.b, 1.c, 1.f and 1.g-creditor XYZ). One was for a loan for a motorcycle, another was a debt consolidation loan, and the two remaining were for credit cards. He told the investigator that he was current on these debts. He said he planned to sell the motorcycle and move to a less expensive apartment. He told the investigator that he believed his financial situation was due to carelessness and neglect. He had no one to blame, but the contributing factors of his divorce, unexpected child support, and reduction in rank had an impact. He understood he made some missteps in the last ten years on his way to becoming an adult. He learned from the experiences, and the lessons will improve his future. (Item 11)

In March 2020, Applicant completed an SCA. Regarding his finances, he stated that he was disputing the debt alleged in SOR ¶ 1.d. It was for a repossessed vehicle, and he believed the creditor had violated state law by failing to notify him within 48 hours to remove his personal effects from the vehicle. He noted that the state statute of limitations applied, and he would be forced to hire legal representation to have the debt removed from his credit report or wait until it was removed due to its age. In his SOR answer, Applicant reiterated his position and also stated that “payment arrangements to bring the account to current and paid status had been made the previous night via phone correspondence.” Presumably he made these arrangements the night before the vehicle was repossessed. (Item 3) He said that this debt was due to his 2013 divorce and 2015-2016 transition from the military to civilian life. He stated: “I was unable to meet my financial obligations at that time.” (Item 3). In his response to the FORM, Applicant stated the debt is still in dispute. Applicant did not provide any documentary evidence to corroborate that he has disputed the debt and is not responsible for it. SOR ¶ 1.d is unresolved.

In Applicant's March 2020 SCA, he acknowledged the multiple debts to the two creditors XYZ and ABC alleged in the SOR (§§ 1.a, 1.b, 1.c, 1.e, 1.f, 1.g). He stated:

Upon my transition from active duty service with the [military service], I made poor financial decisions. I lived beyond my means for a time post-divorce while on active duty while continuing this trend in the months that followed after transitioning. (Item 4)

He further stated:

I currently have negative accounts with both [XYZ] and [ABC]. At this point, I am simply waiting for these accounts to fall off of my credit report. I have had no contact from these institutions in several years. (Item 4)

In his 2020 SCA, regarding the credit card accounts in SOR §§ 1.a, 1.b, and 1.g, Applicant stated that the accounts were closed and he had no contact with the creditors in several years. He acknowledged the debts were still active, and he was looking for options to settle the debts, including researching a credit repair or counseling service to have a third party negotiate a lower settlement amount. (Item 4)

In Applicant's SOR answer, he admitted owing the debts in SOR §§ 1.a and 1.e stating he could not pay these accounts because of his 2013 divorce and 2015 to 2016 transition from the military. He stated he was working on negotiations with the creditor to settle the debts since his financial situation had improved. (Item 3) In his response to the FORM, he refers to the debts as "supposed outstanding debts" and states the debts are reported by one credit bureau (CB) and not by another CB, so he is going to dispute the debts. Applicant provided no evidence that he has paid, negotiated settlements to pay these debts, or is not responsible for these debts to which he has repeatedly admitted to owing. The debts in SOR §§ 1.a and 1.e are unresolved. (AE B, C)

In his SOR answer, Applicant denied the debts owed to XYZ (SOR §§ 1.b, 1.c, 1.f and 1.g). He stated that the creditor discharged the debts and the amounts were reported as income to the IRS in 2018 for which he paid federal and state taxes. In his FORM response, he stated the debts were removed from his credit report. He provided a copy of his 2018 tax transcripts that reflect the debts in SOR §§ 1.c and 1.f were reported as discharged debts and included as income on his 2018 tax return. The transcripts did not reflect the debts in SOR §§ 1.b or 1.g were canceled and reported. There is no evidence Applicant paid or attempted to pay any of the debts owed to XYZ. (Item 3; AE B, D, E)

Applicant provided a document to show that in November 2016, he paid the debt in SOR § 1.h. It is resolved. (AE A).

In Applicant's SOR answer and response to the FORM, he states that since he had financial problems in 2015-2016, he has purchased a house, has two car payments on new vehicles that are current, supports his family and ensures his bills are paid timely. He believes the credit reports used for the SOR are outdated, flawed and mistaken. He

plans to dispute them because they do not reflect his current financial status. Instead they represent a transitional period of his life after his divorce and move to civilian life. He stated: "I have rectified these circumstances through personal effort, time, and attention to detail." (AE B)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a long history of not meeting financial obligations beginning in at least 2015. He has numerous delinquent debts totaling over \$67,000 that he has been aware of for many years and repeatedly indicated he was addressing them, but failed to do so, despite his claim that he is in a good financial position. 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;
- (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 has not provided evidence that he has paid any of the alleged delinquent debts, except the small debt in SOR ¶ 1.h. His debts are recent and ongoing. He has repeatedly indicated that he was addressing his delinquent debts, but provided no substantive evidence to corroborate any action taken. His behavior casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his 2013 divorce and a period in 2015 to 2016, when he was transitioning out of the military. These factors were beyond his control. He also attributed it to living beyond his means, carelessness, and neglecting his finances. These factors were within his control. Applicant has been aware of the debts alleged in the SOR since 2015. He failed to provide evidence of his actions to pay the debts, but indicated he was waiting for them to drop off his credit report. He indicated that some were resolved because the amounts he defaulted on were reported as canceled debts and reported as income on his tax returns in 2018. None of these things reflect that Applicant acted responsibly. To the contrary, waiting for a debt to become unenforceable through the statute of limitations reflects that Applicant is unreliable. Having a debt canceled and reported as taxable income is not the same as paying the amount due and acting responsibly. AG ¶ 20(b) does not apply.

There is no evidence that Applicant received financial counseling or that he resolved all of the financial allegations that were raised in the SOR. AG ¶ 20(c) does not apply.

Applicant resolved the debt alleged in SOR ¶ 1.h. AG ¶ 20(d) applies to that debt. There is no evidence Applicant initiated or is adhering to a good-faith effort to repay overdue creditors. The fact that debts may have fallen off his credit report after seven years for failing to pay them or having them canceled and included as income on his tax returns is not a good-faith effort to resolve his delinquent debts. AG ¶ 20(d) does not apply to the remaining delinquent debts.

Applicant stated he was disputing the debt alleged in SOR ¶ 1.d, but failed to provide documented proof as to the legitimacy of his dispute or evidence of any actions he may have taken to resolve the issue. AG ¶ 20(e) 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 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.

Applicant has had many years to resolve the debts alleged. He indicated that he is in a good financial position and his past debts do not reflect his current finances. Two of his debts were resolved by the creditor when it canceled the debts and reported them to the IRS to be included as income. This is not the same as paying the debt. Applicant paid one small debt. For the remainder of the debts, he failed to provide evidence that he paid, settled, or resolved them. Instead, he is relying on the statute of limitations and removal of them from his credit report to indicate he is no longer responsible for the debts.



The Appeal Board provides a summary regarding “non-collectable” debts:

The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitations, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness in making a decision about the applicant’s security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner.” ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018) quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan 19, 2011)

Applicant’s argument that the credit reports used by the Government to corroborate his delinquent debts are flawed and mistaken because the debts have dropped off is disingenuous. Applicant has repeatedly acknowledged owing the debts and claimed he was negotiating settlements to pay them. Applicant failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge