



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



In the matter of: )  
)  
) ISCR Case No. 21-00911  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, 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 June 25, 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 on June 8, 2017.

Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 15, 2022, scheduling the hearing for April 6, 2022, by Microsoft Teams. The hearing was held as scheduled.

The Government offered exhibits (GE) 1 through 8. Applicant testified and did not offer any documentary evidence. He did not object to the Government's exhibits and they were admitted into evidence. The record remained opened until April 20, 2022, to permit Applicant to provide evidence. Applicant was confused about the date the record closed and provided documents after the date the record closed. He offered Applicant Exhibits (AE) A through H. There were no objections to the late submissions or any of the exhibits and all were admitted into evidence. DOHA received the hearing transcript on April 18, 2022.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.j, and 1.l. He denied the SOR allegation in ¶ 1.k. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He immigrated to the United States in 2001 and is a naturalized citizen. He enlisted in the military in 2001 and was medically discharged with an honorable discharge in 2006. He earned a bachelor's degree in 2010 and a master's degree in business in 2015. He married in 2011 and has three small children. He has worked for a federal contractor since 2019. (Tr. 32-35)

The SOR alleges 10 delinquent credit cards and loans totaling approximately \$53,735. He cosigned for his wife's student loan which is in default status. The last payment was in November 2017. (SOR ¶ 1.a-\$24,395). His mortgage was past due in the amount of approximately \$71,887 (SOR ¶ 1.k). These debts are corroborated by Applicant's admissions in his security clearance application (SCA), background interview, government interrogatories, and credit reports from August 2019, January 2020, February 2021, and March 2022. (Tr. 72-74; GE 1, 2, 3, 4, 5, 6, 7)

Applicant testified that he worked in industry and progressed in his career moving up from a technician to a program manager, increasing his salary and responsibility along the way. He wanted to own his own business and saw a business opportunity. He left his job in approximately July 2017 and became the director of operations in a start-up business that he believed had excellent potential. He stated that when he left his stable job he was making six figures and had medical benefits. He said he did not worry about his credit and not paying bills because entrepreneurship is about taking risks and gambling. He understood the risks. (Tr. 37; GE 1)

Applicant grew the company and was paid for about 8 to 10 months as was his medical insurance, but the business began to have money issues. He agreed to become an independent contractor employee (1099) to help with the cash flow issues. The business started having more problems, and Applicant was not being paid or was receiving partial payments or late payments. He started missing payments on his mortgage and his other accounts. He paid for the necessities. He explained that a lot of promises were made by the owner of the business to him, but he attributed it to the

entrepreneurial goal of the business. None of the promises were in writing. The business stopped paying his health insurance and his wife was pregnant with medical issues. Applicant became inundated with delinquent accounts. He stated that he is owed money from the business, but the matter is in litigation. He estimated he is owed about \$70,000-\$80,000. The owner promised when they win the case Applicant will be paid. The litigation has been ongoing for about three years. He left the business and he was unemployed for several months. He accepted a job in June 2019 that was an hour drive from his home. His starting salary was about \$100,000. He was promoted and his current salary is about \$135,000. Applicant also receives \$1,882 monthly in disability benefits from Department of Veterans Affairs (VA). (Tr. 35-45, 67, 69-71)

Applicant explained that his first goal was to make sure his house was not foreclosed. He was able to obtain a loan modification for his mortgage (SOR ¶ 1.k), which is now current. He provided the supporting documents. (Tr. 46; SOR Answer)

Applicant testified that his wife does not work outside the home and he is the only one earning an income. He began contacting creditors to reach settlements. He negotiated a settlement with the creditor in SOR ¶ 1.d, which was approved in August 2021 (balance owed \$7,434) to pay \$2,230 over 18 months. He provided documentary proof that he has made the requirement monthly payments since then. (Tr. 47-50, 68; GE 7; AE B, G, H).

Applicant reached a settlement agreement with the creditor in SOR ¶ 1.c (\$11,570) to pay \$5,785. He provided proof that he has made six monthly payments from November 2021 to March 2022. (Tr. 53-59, 74; AE F)

Applicant also provided proof that he has been making payments on another debt since October 2021. He provided documents to substantiate the payments. The creditor listed on his documents is not a collection agency and it is not one of the creditors alleged in the SOR. (AE A, C, D)

At his hearing, Applicant stated he had no other payment agreements with the remaining creditors alleged in the SOR. Applicant's wife has credit cards that are also delinquent. They deliberately stopped making payments on the credit cards so the creditors would agree to negotiate settlements. (Tr. 79-84; GE 7)

In February 2022, Applicant started a side business so he could increase his income. It is a delivery service for a major company. He estimated that after paying expenses, he has made about \$2,500 since February. He has consulted a credit counseling company, but did not hire it. He said he has told his creditors that he is paying what he can afford. He said he stopped paying some credit cards because the creditors would not negotiate a settlement unless he defaulted. He obtained a \$15,000 secured loan in August 2021, so he could repay his mother and brother money they had lent him. Applicant estimated he borrowed about \$5,000 each from his mother and brother. He has paid them back. Prior to the COVID pandemic, Applicant was paying his student loans. Under the CARES Act the loans are deferred. He owes about \$79,000. He will seek an

income-based payment plan when his student loans are no longer deferred. (Tr. 61-65, 75-79, 85, 87-89)

In the past, Applicant played in poker tournaments at casinos to relax. The entry fees can be as high as \$550. Sometimes his coworkers would give him the entry money. In 2018, he played a couple of tournaments and finished high enough in one to claim about \$11,000 in prize money. A couple of days later he had another big win. He stated that in the past he has won more than he wagered. He said he would use his winnings to celebrate by taking his family out for dinner and purchase items. He said he paid some debts. Due to the pandemic he stopped going to the casino to play. He also said it is time consuming and takes him away from his family. His last tournament was in 2019. He said the most he has lost in one day was \$2,000. (Tr. 99-105; GE 6)

Applicant does not have money saved in a pension plan or Individual Retirement Account. He filed his 2020 federal tax return and owes about \$2,000 due to an error made in the return. He has not paid this tax debt. He believes he will be entitled to a refund on his 2021 taxes, and it will be applied to the balance he owes. He stated that the IRS claims he owes \$7,000, but he believes it is an error that will be corrected. Applicant does not keep a budget, but intends to start one in the future. (Tr. 106-114)

### **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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the

totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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 has numerous credit cards, personal loans, and a student loan that are delinquent or in collection. 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 has numerous delinquent credit cards, loans, and a student loan that are not resolved. His debts are ongoing and recent. Applicant attributes his financial problems to a decision he made to leave a stable job and take a risk working in a new business that had the potential for substantial rewards. He took the risk. He did not receive a salary for a period and promises were made to him about being compensated. Perhaps that part of the equation was not anticipated, but he knew it was risky, and willingly gambled and lost.

This was his choice and not beyond his control. He addressed his mortgage debt because he was worried about foreclosure and having a home for his family. He has settlement agreements on three debts (one not alleged), but none of the other debts are resolved. AG ¶ 20(a) does not apply. There is insufficient evidence for the full application of AG ¶ 20(b).

Applicant did not provide sufficient evidence that he has participated in financial counseling or that there are clear indications his financial problems are under control. AG ¶ 20(c) does not apply. Applicant was able to obtain a loan modification to keep his house from foreclosure, and he is current on the payments. SOR ¶ 1.k is resolved. He recently negotiated settlement agreements with two creditors for the debts alleged in the SOR ¶¶ 1.c and 1.d. AG ¶ 20(d) applies to those debts. There is no evidence that he has payment plans or resolved the other delinquent accounts or the student loan alleged in the SOR.

### **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, but some warrant additional comment.

Applicant took a financial risk realizing if it worked out he would reap a significant reward. It did not, and he has numerous debts that remain delinquent. He has payment plans for three debts (one that is not on the SOR), but he has numerous credit cards, loans, and a student loan that have not been resolved. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's

eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate 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: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.b:    | Against Applicant |
| Subparagraphs -1.c-1.d:   | For Applicant     |
| Subparagraphs -1.e-1.j:   | Against Applicant |
| Subparagraph 1.k:         | For Applicant     |
| Subparagraph 1.l:         | Against 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