



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



In the matter of: )  
 )  
 ) ISCR Case No. 20-03085  
 )  
 Applicant for Security Clearance )

**Appearances**

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

04/27/2022

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On January 4, 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.

In an undated answer to the SOR, Applicant 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 17, 2022, scheduling the hearing for April 14, 2022. I convened the hearing as scheduled. The

Government offered exhibits (GE) 1 through 4. Applicant offered Applicant Exhibit (AE) A. There were no objections and all exhibits were admitted into evidence. Applicant testified on his own behalf. DOHA received the hearing transcript on April 25, 2022.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. His admissions are incorporated into the 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 40 years old. He is a college graduate. He was married from 2004 to 2014 and has three children from the marriage, ages 16, 13 and 11 years old. He remarried in 2017 and divorced in 2018. He has been employed by his present employer since April 2019. (Tr. 13-16)

The SOR alleges seven delinquent debts for credit cards and a personal loan totaling approximately \$33,848.

In 2018, Applicant was laid off from his job with a defense contractor. He was earning about \$70,000. As he looked for another job, he worked with his father in construction and sales, but his income had been drastically reduced. During this period, he and his wife did not have health insurance and both experienced medical issues. He was also paying an attorney as his ex-wife wanted to change the amount of his child support payments. Applicant used credit cards and a loan to supplement his income, but had difficulty maintaining the payments and subsequently defaulted on some of them. (Tr. 14-18, 26)

Applicant got a new job in April 2019, earning a salary of \$113,000. Shortly after he began work he contacted a debt relief (DR) company to help him resolve his delinquent debts. He made monthly payments of approximately \$400 to a dedicated account to be used to settle his debts. This amount later increased to \$523. He consistently made the payments and four of the debts on the SOR were resolved. DR suggested it would make financial sense for Applicant to get a loan and use the proceeds to pay the remaining two debts and then just have the loan payment due. Applicant obtained a loan through DR for \$7,565 that had the same monthly payment he had been making to the dedicated account, \$523. Applicant then paid the remaining two debts on the SOR. He now makes timely loan payments. All of the debts alleged in the SOR are resolved. (Tr. 18-24; AE A)

Applicant testified that he has not participated in financial counseling, but has learned from this experience. He is more aware of his finances and monitors his accounts regularly through a credit reporting service. His expenses are paid on time, and he does not have any new delinquent debts. He is current on his child support payments and timely files his tax returns and pays his taxes. He does not live paycheck to paycheck.

Applicant takes pride in holding a security clearance. He has diligently worked to resolve his delinquent debts. (Tr. 24-32)

### **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 seven delinquent debts totaling approximately \$33,848 that began accumulating in 2018. 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 delinquent debts to being laid off from his job in 2018 and then being underemployed. When he began his new job in April 2019, he contacted DR to help him resolve his debts. He made consistent payments into a dedicated account used to settle his debts. He then took a loan to repay the remaining two debts and continues to make consistent payments on the loan. Applicant's financial difficulties are unlikely to recur and do not cast doubt on his current reliability, trustworthiness or good judgment. His unemployment and underemployment were beyond his control. Once he was gainfully employed, he began resolving his debts. He acted responsibly under the circumstances. He has repaid the debts he owed. Although, he has not participated in financial counseling, he has learned lessons and there are clear indications that his financial issues are resolved. 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.

Applicant met his burden of persuasion. He has established a reliable financial track record. The record evidence leaves me with no questions or doubts as to Applicant's 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.g: 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