



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



In the matter of: )  
)  
) ISCR Case No. 21-00062  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: Brittany Forrester, Esq.

06/21/2022

**Decision**

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 May 28, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant 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 April 8, 2022. After coordinating with counsel, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2022, scheduling the hearing for May 25, 2022. The hearing was held

as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits A through W. There were no objections to any exhibits and all were admitted into evidence. DOHA received the hearing transcript on June 3, 2022.

### **Findings of Fact**

Applicant admitted the allegation in SOR ¶ 1.a and denied the allegations in ¶¶ 1.b through 1.k. I adopt his admission as a finding of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He attended college, but did not graduate. He married in 2007 and has a grown stepdaughter. He served in the military reserves and National Guard at various times from 1986 to 2003, and was on active duty from 1997 to 2003. He participated in combat operations in Kosovo, Iraq and Afghanistan. He has worked as a federal contractor overseas in Iraq and Afghanistan in combat zones. He has been employed with his present employer since December 2017. (Tr. 15-17, 57-59; GE 1, 2)

Applicant attributes his financial difficulties to a period of unemployment and underemployment. In 2013, he was laid off from his well-paying job (\$166,000 annual salary). (GE 2) He was unemployed from October 2013 through 2014. He used his savings to pay his expenses. He decided to go back to school in February 2014 to October 2014 to obtain certifications that would help him get a good job. He used the military education benefits he had earned that paid his tuition and a stipend. He also worked part-time. In an attempt to pay his bills, in 2014, he started a business, but it failed. Applicant filed Chapter 13 bankruptcy in October 2014, but it was dismissed in 2015 because he was unable to make the required payments. He was able to get another overseas contractor job in mid-2015. (Tr. 17-24, 55-57, 59-64; GE 1, 2; AE I)

Applicant's admissions in his security clearance application, interrogatories, and credit reports from September 2019, September 2020, and September 2021 corroborate the allegations in the SOR. (GE 1, 2, 3, 4, 5)

After Applicant got a defense contractor job overseas, the salary was insufficient to pay his past bills. He attempted to negotiate with his creditors to pay his bills, but it was logistically difficult due to living overseas, time differences, and being unable to make contact. In 2018, he attempted to file Chapter 13 bankruptcy again, but was told he earned too much. He was saving money while overseas. He then contracted with a debt relief company (the DRC) in March 2018 to help him resolve his delinquent debts. He paid them a lump-sum payment of \$6,000 to begin addressing both his unsecured and secured debts. The DRC would take a percentage of the amount the debt was settled for and a monthly fee. Although the DRC was helping him settle his debts, he stated that he reached a level of frustration with them because he felt like they were procrastinating in settling his debts so they could continue to receive fees. (Tr. 63-73, 77; AE B)

Applicant testified that the DRC did not inform him until 2022 that it would not negotiate settlements on secured debts. The debt in SOR ¶ 1.a (\$6,777) is a secured debt. He explained that the DRC had the debt for more than three years and did nothing.

He contacted the creditor and arranged a payment plan to make three monthly payments of \$1,233 beginning in May 2022. He provided proof of the agreement and the first payment he made was \$1,502. The debt is being resolved. (Tr. 25-31; AE B, D, J)

Applicant provided proof that he has paid the following debts directly, they were settled through the DRC, or he is making payments through a payment plan.

SOR ¶¶ 1.b and 1.g - same creditor (\$616 and \$1,065 respectively), paid. (Tr. 31-33; AE K)

SOR ¶ 1.c (\$5,928) settling for \$3,396, monthly payments of \$283. (Tr. 33-37; AE C, L)

SOR ¶ 1.d (\$16,645) secured debt. Paid settlement of deficiency balance (\$5,100). (Tr. 37-39; AE D, M)

SOR ¶ 1.e (\$1,148) settled in full. (Tr. 39; AE N)

SOR ¶¶ 1.f and 1.i –same creditor (\$3,510 and \$12,918 respectively)-settled accounts through DRC and received IRS forms 1099C-cancelation of debt for amount not paid, and the forms were filed with tax returns (Tr. 39-46; AE C, D, O)

SOR ¶ 1.h (\$651) paid. (Tr. 46;47, 49-50; AE P)

SOR 1.j (\$232) paid. (Tr. 50-51; AE Q)

SOR 1.k (\$427) paid. (Tr. 50-51; AE Q)

Applicant testified that he tried various options to resolve his delinquent debt and did not ignore his financial responsibilities. Before he was laid off in 2013, he did not have financial problems. Applicant does not have any new delinquent debt. He pays his expenses on time. He files his income tax returns on time. He testified that he participated in financial counseling in 2019. He credibly testified that he intends to complete the payment plans he has arranged. (Tr. 52, 73, 76-77; AE E)

Applicant provided a copy of his resume and excellent performance reviews. Letters of recommendation describe him as knowledgeable, selfless, trustworthy, and a team player. (Tr. 51-52; AE F, G, H, W)

## **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 numerous delinquent debts that began accumulating in 2015 that he was unable to pay. 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 accumulated delinquent debts after he was laid off from his well-paying job in 2013. He attempted to use his savings to pay his debts, but was unable. He attempted to file Chapter 13 bankruptcy, but could not afford the payments. He attempted to contact his creditors to resolve his debts while he was living overseas, but it was logistically prohibitive. He eventually contracted with DRC to help him settle his debts, which they did. He later learned they would not negotiate settlements on secured debts. Applicant felt they were procrastinating in settling his debts and took action to contact the creditors and negotiate payments on his own behalf. Applicant has paid or is paying all of the delinquent debts alleged. I find Applicant did not ignore his financial responsibilities and acted responsibly under the circumstances. Future financial issues are unlikely to recur. Applicant received financial counseling and made good-faith efforts to pay or resolve his debts. 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 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.k:	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