



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 21-00741
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2022

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not present sufficient information to mitigate the security concerns raised by his unpaid delinquent debts. Clearance eligibility is denied.

**Statement of the Case**

On July 26, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On January 18, 2022, Applicant responded to the SOR allegations. He provided his credit report and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On February 17, 2022, the Government submitted a File of Relevant Material (FORM), consisting of a statement of its position, the pleadings (Items 1 and 2), and three documentary exhibits (Items 3 through 5). On March 2, 2022, DOHA forwarded a copy of the FORM to Applicant, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on March 10, 2022. No response was received by the April 9, 2022 deadline.

On May 13, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on May 23, 2022.

### **Evidentiary Rulings**

Department Counsel submitted as Item 4 in the FORM a summary report of personal subject interviews (PSI) of Applicant conducted on April 9, 2020, and April 13, 2020, by an authorized investigator for the Office of Personnel Management (OPM). The summary report was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report in this case did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant's attention was directed to the following important notice regarding Item 4:

**The attached summary of your [PSI] is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this [FORM], you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to admissibility of the summary and may consider the summary as evidence in your case.**

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant did not object to the FORM or indicate that the PSI summary contained inaccurate information.

Applicant has his bachelor's degree. He can reasonably be held to have read the PSI summary, and there is no evidence that he failed to understand his obligation to file any objections to the summary if he did not want the administrative judge to consider it. Accordingly, I find that he waived any objections. Government officials are entitled to a presumption of regularity in the discharge of their official responsibilities (See, e.g., ISCR Case No. 15-07539 (App. Bd. Oct. 18, 2018)), and there is nothing in the record to doubt the accuracy of the summary. The SOR (Item 1) and Answer (Item 2) are incorporated in the record as the pleadings. Items 3 through 5 are accepted into evidence as Government's exhibits, subject to issues of relevance and materiality in light of the entire record.

### **Findings of Fact**

The SOR (Item 1) alleges under Guideline F that, as of July 26, 2021, Applicant owed \$19,599 in charged-off debt on ten credit-card accounts (SOR ¶¶ 1.a-1.g, 1.i-1.j, and 1.l) and \$1,105 in collection debt on two accounts (SOR ¶¶ 1.h and 1.k). When Applicant responded to the SOR (Item 2), he admitted each of the debts, but asserted that he fell for a credit-repair scam. He enrolled in a debt-consolidation program and was told that he would have to allow his accounts to become delinquent for any settlement negotiations. A few months into the program, he "realized that it had become unsustainable and that [he] had been a victim of a shady practice."

After considering the pleadings and Government exhibits, I make the following findings of fact:

Applicant is 37 years old. He has never married and has no children. He earned his bachelor's degree in September 2014. From September 2014 to July 2017, he worked for an electronics retailer. He has worked as a program coordinator and fire-desk operator for his current employer since July 2017. (Items 3, 4.) In February 2020, he received an offer of employment from a defense contractor that is contingent on him obtaining a security clearance. (Items 3, 4.)

On March 10, 2020, Applicant completed a Questionnaire for National Security Positions (SF 86), not having previously held a DOD security clearance. In response to an SF 86 inquiry concerning any delinquency involving routine accounts, Applicant listed nine charged-off accounts with five different creditors totaling \$21,078, including the debts in SOR ¶¶ 1.a-1.g, and 1.i. He indicated that his financial issues primarily started around May 2019, due to increases in his rent, other living expenses, and to “sudden large expenses.” He explained that he could not take any actions presently to resolve the debts because of insufficient income and rent and other large expenses taking priority. He asserted that he planned to pay the debts, when [he] secured increased income.” (Item 3.)

On April 9, 2020, Applicant was interviewed by an authorized investigator for the OPM. He explained that his financial problems began when his monthly rent increased from \$1,150 to \$1,270 around May 2019, and he had to choose which bills to pay. His rent increased again, in February 2020, to \$1,310 per month. He explained that he tried to repay his debts through a debt-consolidation company that took his money and made his situation worse, so he dis-enrolled from the program and made some payments when he could afford to do so. In addition to the debts disclosed on his SF 86, he discussed credit-card accounts (SOR ¶ 1.j and 1.i), with respective balances of \$642 and \$612, and stated that he would make payments on them with his next COVID-relief stimulus check of \$1,200. He did not plan to repay the debt in SOR ¶ 1.e because it had been charged off. When asked about other debts on his credit report (SOR ¶¶ 1.g, 1.h, 1.k, and 1.l), he did not dispute them and added that he would pay off the debts in SOR ¶¶ 1.h and 1.k within the next six months to one year. He planned in the future to be more financially responsible and stated that he would pay off his past-due accounts; impose daily limits on his accounts so that he stayed within his income; and use cash rather than credit for purchases. If granted a clearance, he could take the job with the defense contractor, which could increase his annual income by \$3,000. (Item 4.)

Applicant was re-contacted by the investigator on April 13, 2020, for additional information about his attempted debt repayment through the debt-consolidation process. He gave estimated dates of October 2019 to January 2020 for when he paid into the plan. He acknowledged that his accounts had been in collection before being charged off. He stated that he had no intention of repaying those debts that had been charged off. He added that the \$1,200 economic stimulus payment was pending deposit to his checking account, and once it cleared, he would make minimum payments to bring some past-due accounts up-to-date. (Item 4.)

A check of Applicant’s credit on March 2, 2021, showed that the accounts in SOR ¶¶ 1.a-1.g, 1.i-1.j, and 1.l had been opened between May 2015 and December 2018. Some reduction in balances was reflected with respect to three accounts: SOR ¶ 1.h from \$1,054 to \$668 in collection; SOR ¶ 1.k from \$2,413 to \$437 in collection; and SOR ¶ 1.l from \$795 to \$284 charged-off after collection. His credit report showed that he made payments according to terms on other debts: a car loan obtained in November 2015 for \$27,870 with monthly payments of \$599 for 72 months (balance \$8,685); a credit card obtained in December 2017 with a \$900 credit limit (balance \$858); two telecommunications accounts

opened in January 2019 and July 2020 (balances \$175 and \$135); and a utility account opened in August 2020 (balance \$57). (Item 5.)

As of January 2022, Applicant was making timely payments of \$496 per month on a new car loan obtained in March 2021 for \$26,111. He was also making payments according to account terms on \$6,501 in outstanding credit-card balances on five accounts opened between October 2017 and October 2021. None of the charged-off balances listed in the SOR were on his January 2022 credit report. (Item 2.)

Applicant asserts in mitigation that the debt-consolidation firm told him that his accounts would have to be delinquent before the creditors would agree to any settlements, and by the time he realized he had fallen for “a shady practice,” he could not undo the damage to his credit. He maintains that had he known the negative impact on his credit, he would not have acquiesced to the debt-relief program. He cited his record of timely payments on his open accounts. As for his charged-off delinquencies, he stated, “At the time of [his] investigation, all delinquent accounts had been charged off by the original creditor.” He expressed regret for trying the debt-relief program but did not indicate that he would attempt to resolve his charged-off debts. (Item 2.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are articulated 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. . . .

An applicant is not required to be debt free, but is required to manage his or her finances in a way as to exhibit sound judgment and responsibility. 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.

Guideline F security concerns are established when an individual does not pay financial obligations according to terms. Applicant admits that he defaulted on the accounts in the SOR. As of July 2021, he owed approximately \$20,704 in charged-off accounts or collection balances. None of the debts are on Applicant's current credit report. There is no evidence that the creditors are pursuing Applicant for the unpaid balances, most of which has been charged off. While the debts may no longer be a source of financial pressure for Applicant, the federal government is still entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debts in a timely manner. See, e.g., ISCR Case No. 14-03991 at 2 (App. Bd. Jul. 1, 2015.). The Appeal Board has held that the administrative judge is not precluded from considering whether the circumstances underlying a debt impugn an applicant's judgment or reliability. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015).

Applicant's record of unresolved delinquency establishes AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations." He made some payments on three accounts, including the account in SOR ¶ 1.l where a \$284 balance had been charged off after collection, but made no payments since the SOR was issued. However, he stated during his PSI that he did not intend to repay the debt in SOR ¶ 1.e because it had been charged off. It appears that attitude prevails with respect to his other charged-off balances. AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," is also established.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

- (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 person has received or is receiving 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.

AG ¶ 20(a), which provides for mitigation of debts that happened “so long ago,” cannot reasonably apply. While available credit information does not provide much detail after the delinquency history of the accounts, they were opened between 2015 and 2018 and had been charged off or were in collection by February 2021. Applicant indicated that he began having financial issues around May 2019. His delinquencies are considered recent because an applicant’s ongoing, unpaid debts evidence a continuing course of conduct. See, e.g., ISCR 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing, e.g., ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

Regarding AG ¶ 20(b), Applicant explained during his PSI that he began to struggle financially due to an increase in his rent in May 2019, which was a circumstance outside of his control. Yet, for AG ¶ 20(b) to apply in mitigation, Applicant has to demonstrate that he acted responsibly under his circumstances to address his debts. While he may have acted in good faith on the advice of a debt-consolidation firm to stop paying on his credit-card accounts so that the creditors would consider settlements, he dis-enrolled from the debt-relief program in approximately January 2020, after only a few months’ time. He knew or should have known as of his April 2020 PSI, if not as of his March 2020 SF 86, that the delinquent accounts were of concern to the DOD. His credit report shows some reduction in the debt balances of three accounts prior to February 2021, but that is not enough in mitigation. The Appeal Board has held that an applicant must demonstrate “a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” See ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018), citing, e.g., ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018). There is no evidence that Applicant made any attempt to contact his creditors or otherwise take action toward resolving or settling most of his delinquent debts.

Neither AG ¶ 20(c) nor AG ¶ 20(d) is established by waiting until past-due balances are written off by creditors who may decide not to pursue a debt any longer, or until debts drop from one’s credit record because of the passage of time without activity or other reason. Applicant has not made any recent payments on his closed, past-due accounts. Although his record of timely payments on his open accounts weighs in his favor, it is not enough to mitigate his ongoing disregard of the delinquent balances alleged in the SOR. None of the mitigating conditions are fully established.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in 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), “[t]he ultimate determination of whether the granting or continuing of national security clearance eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the [pertinent] guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis.

The security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. It is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). It was incumbent on Applicant to show that his financial situation is sufficiently stable and not likely to present an ongoing security concern. He indicated on his SF 86 that, in addition to the sudden increase in his rent, he incurred additional unexpected expenses. He did not provide any details about those expenses. He exhibited an unacceptable tendency to act in self-interest by continuing to take on new debt, including a \$26,111 car loan, while ignoring the debts in the SOR. He presented no employment or character references attesting to his judgment and reliability in handling his personal and work affairs that could weigh in his favor under the whole-person concept. It is unclear whether Applicant could be counted on to make payments toward his delinquent debts were he to begin working for the defense contractor sponsoring him for clearance eligibility.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the interests of national security to grant security clearance eligibility for Applicant.

### **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.i:	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 interest to grant eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge