



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00155
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: Brian A. Laird, Esq.

06/28/2022

\_\_\_\_\_

**Decision**

\_\_\_\_\_

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On June 15, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on August 6, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2022.

The hearing was convened as scheduled on May 26, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through R, which were admitted without objection.

**Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor, where he has worked since July 2017. He served in the U.S. military from 1999 to 2005 and the

military reserve from 2005 to 2010. All service ended with an honorable discharge. He seeks to retain a security clearance, which he has held since his time in the military. He attended college for several years, but he has not earned a degree. He is married for the second time after his first marriage ended in divorce. He has three children between the ages of 20 and 25 and an adult stepchild. (Tr. at 13-25, 28, 40; 50, 52; GE 1, 6)

Applicant has a history of financial problems. He lost a job in 2010 because he was ineligible for a clearance upgrade because of his finances. The DOD issued an SOR to him in 2014. That SOR was withdrawn because Applicant was able to bring his finances back in line. (Tr. at 54-56, 70; GE 1, 6)

Applicant's finances once again became problematic because he was required to make high child support payments of \$1,000 per month; his daughter wrecked their vehicle in 2016, requiring the purchase of a used car; his wife is disabled and unable to work; and he pays his disabled sister-in-law \$200 per month to help her out. His father became ill and passed away in 2016. There were expenses related to traveling cross country to visit him and to attend the funeral. His youngest child has autism and his second child also has some special needs. He continues to pay his ex-wife even though his children have reached majority and the child-support order is no longer in effect. (Tr. at 19, 23-2, 41, 48-49, 52-54; Applicant's response to SOR; GE 6)

The SOR alleges 11 delinquent debts totaling about \$27,900. The debts include a \$629 public utilities debt (SOR ¶ 1.a); a \$1,970 debt to a landlord of an apartment (SOR ¶ 1.b); six defaulted student loans totaling about \$21,956 (SOR ¶¶ 1.c – 1.h); two medical debts totaling \$147 (SOR ¶¶ 1.i, 1.j); and a \$3,199 payday loan (SOR ¶ 1.k). Applicant owed all of the debts at one time, but all of the debts have been paid, settled, brought current, or otherwise resolved. Specific debts are addressed below.

Applicant paid or settled debts that were not alleged in the SOR before the SOR was issued. He paid or settled debts to American Express and Capital One in 2019. (Tr. at 73; GE 2-5)

Applicant paid the \$629 utilities debt (SOR ¶ 1.a) in July 2021. The debt was for their final electric bill before they moved. He forgot about it before the DOD brought it to his attention. (Tr. at 35-37, 56-57; Applicant's response to SOR; GE 2-5; AE A)

Applicant's previous apartment had a bedbug infestation. The landlord hired an exterminator and billed Applicant (SOR ¶ 1.b). Applicant believed his neighbors brought in the bedbugs, and he should not have had to pay for the exterminator. He relented after receiving the SOR and paid the debt in October 2021. (Tr. at 37-39, 57-59; Applicant's response to SOR; AE B)

Applicant was on a \$5 per month rehabilitation program for his student loans (SOR ¶¶ 1.c – 1.h) from 2019 through March 2020. The student-loan pause brought on because of the COVID-19 pandemic stopped the rehabilitation program. Applicant has been approved for a consolidation loan. He will resume payments when the pause is over. (Tr. at 39-41, 59-63; Applicant's response to SOR; GE 2-6; AE C-J, R)

SOR ¶¶ 1.i and 1.j allege \$88 and \$59 medical debts as listed on a June 2020 Equifax credit report. The creditors are not identified in the credit report or the SOR. The activity date for both debts is August 2019. The debts are not listed on the May 2021 Equifax credit report, nor any other recent credit report. Applicant has been unable to find out any information about the debts. (Tr. at 41-43; Applicant's response to SOR; GE 2-5; AE L-M)

Applicant took out a payday loan of about \$3,000 to help his ex-wife with her rent. They agreed that each would pay half of the loan. She did not pay her half, and the loan went to collections (SOR ¶ 1.k). Applicant settled the \$3,199 balance due on the loan for \$1,590, with the payment made in April 2022. (Tr. at 41-44, 66-67; Applicant's response to SOR; AE K)

Applicant received financial counseling. His finances are now stable. He maintains a budget. He is able to pay all of his current bills without accruing any additional delinquent debts. (Tr. at 44-49, 51-52, 63-70, 73; AE L-Q)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including defaulted student loans and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 was required to make high child support payments of \$1,000 per month, which he continues to pay without a court order for his special-needs children; his daughter wrecked their vehicle; his wife is disabled and unable to work; he pays his disabled sister-in-law \$200 per month; and he traveled cross country to visit his ill father and to attend his funeral. Some of those events were clearly outside his control, and some he took on voluntarily.

Applicant paid or settled debts to American Express and Capital One before the SOR was issued. All of the SOR debts are paid, settled, bought current (student loans), or otherwise resolved (medical debts).

Applicant's previous financial issues give some pause, but I am convinced that he has learned from this experience and that his financial problems are behind him. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

### **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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.<sup>1</sup>

### **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**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Edward W. Loughran  
Administrative Judge

---

<sup>1</sup> The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant's finances.