



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



In the matter of: )  
)  
) ISCR Case No. 20-03005  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

07/25/2022

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**Decision**

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GARCIA, Candace Le’i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

**Statement of the Case**

On November 25, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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), implemented by DOD on June 8, 2017.

Applicant elected in his response to the SOR (Answer, Item 4) to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on August 27, 2021. A complete copy of the file of relevant material (FORM) was

provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 19, 2021. He did not respond to the Government's FORM. The case was assigned to me on December 2, 2021. The Government's documents identified as Items 1 through 8 are admitted in evidence without objection.

### **Findings of Fact**

Applicant admitted all of the SOR allegations in his Answer. He is 43 years old. He married in 2003, divorced in 2004, remarried in 2013, and divorced and remarried in 2018. He has four step-children, one adult and three minors. (Items 3, 4, 5, 8)

Applicant attended college from January 2009 to June 2012, but did not earn a degree. From March to May 2017, he attended a community college and technical institute and earned a Professional Truck Driver Institute (PTDI) certificate and a Commercial Driver's License (CDL). He worked as a professional driver from May 2017 to the date of his September 2019 security clearance application (SCA). He was unemployed from December 2016 to May 2017, June 2018 to April 2019, and August to September 2019. As of and since his SCA, he worked for his employer as an over-the-road (OTR) truck driver. He was issued a Transportation Worker Identification Credential (TWIC) card and Hazardous Material Endorsement (H) in April 2017, but he has never held a security clearance. (Items 5, 8)

The SOR alleged that Applicant had 19 delinquent federal student loans totaling \$86,242 (SOR ¶¶ 1.a - p, 1.r - 1.t). It also alleged that he had three delinquent consumer debts totaling \$5,151 (SOR ¶¶ 1.q, 1.u, 1.v) and two delinquent medical debts totaling \$437. In addition to his admissions in his Answer, Applicant disclosed his delinquent federal student loans and SOR debts ¶¶ 1.q and 1.u on his SCA. He also discussed his delinquent debts during his October 2019 background interview. The September 2019 and June 2020 credit bureau reports list Applicant's 19 delinquent federal student loans (SOR ¶¶ 1.a - p, 1.r - 1.t). The 2019 credit bureau report also lists SOR debts ¶¶ 1.q, 1.v, 1.w, 1.x, and the 2020 credit bureau report also lists SOR debts ¶¶ 1.q and 1.u. (Items 1, 4-8)

SOR ¶¶ 1.a to 1.p and 1.r to 1.t are for 19 delinquent federal student loans totaling \$86,242. Applicant incurred these student loans when he attended college between 2009 and 2012. He stated in his SCA and during his background interview that he initially paid his student loans for a short period and then he deferred them. He stated in his Answer that he was unaware his student loans were no longer in deferment and had been placed for collection until he checked his credit report. He believed that the U.S. Department of Education was going to forgive his student loans due to the actions of the college that he attended, and he would pay any student loans that were unforgiven. He stated in his Answer that he had not received any "call or e-mails regarding these debts in quite some time now. I'm unsure where to go from here," and ". . . it seems no matter who I call they know nothing about them." He failed to provide any

corroborating documentation that his delinquent federal student loans were resolved or of his efforts to resolve them. (Items 1, 4-8)

SOR debt ¶ 1.q is for a \$1,585 charged-off credit card. Applicant became delinquent on this credit card during his period of unemployment beginning in 2016. He stated in his SCA that he attempted to contact the creditor, but his telephone calls went directly to the creditor's voicemail, and the creditor's voicemail was full and not accepting messages. He indicated during his background interview that this debt was not reported on his credit report with Credit Karma and he would look into it. In his Answer, he stated that he would contact this creditor and immediately resolve this debt. He failed to provide any corroborating documentation of resolution. (Items 1, 4-8)

SOR debt ¶ 1.u is for a \$906 charged-off credit card. Applicant became delinquent on this credit card during his period of unemployment beginning in 2016. He stated in his SCA and during his background interview that the account reflected a zero balance. The 2019 credit bureau report, which reports the \$906 charge off, reflects a zero balance; however, the 2020 credit bureau report reflects both a charge-off and outstanding balance of \$906. Applicant indicated during his background interview that he would look into this debt. In his Answer, he stated that he would contact this creditor and immediately resolve this debt. He failed to provide any corroborating documentation of resolution. (Items 1, 4-8)

SOR debt ¶ 1.v is for a \$2,660 past-due student loan. Applicant indicated during his background interview that this student loan relates to the same student loans in SOR ¶¶ 1.a to 1.p and 1.r to 1.t, and he was unsure why it was reported separately. The 2019 credit bureau report reflects that Applicant opened this account in 2011, and the account was reported in 2019 with the notation that "first payment [was] never received." Applicant stated in his Answer that he understood this debt would be forgiven after the college lost a class action lawsuit. He failed to provide any corroborating documentation that this delinquent student loan was resolved or of his efforts to resolve it. (Items 1, 4-8)

SOR debts ¶¶ 1.w and 1.x are for two medical accounts, placed for collection for \$87 and \$350, respectively. Applicant indicated during his background interview that both medical bills stem from injuries he sustained in a 2018 motorcycle accident, in which he was hit by another driver. He received a settlement from the accident and was awaiting his attorney's instructions as to when to pay the associated medical bills. He was unaware that any of the medical bills had been placed in collection. He indicated that SOR ¶ 1.x was reported on his credit report with Credit Karma, but SOR ¶ 1.w was not. He indicated that he would contact his attorney and pay any remaining outstanding medical bills. (Items 1, 4-8)

In his Answer, Applicant stated that both medical debts were to be paid by a former employer, from 2017 to 2018, for an on-the-job injury that was to be covered by workers' compensation. He stated, "I remember speaking with a woman about this matter and the last I heard, they were contacting [his former employer] about it. That

was several years ago. I assumed the matter had been resolved.” He failed to provide corroborating documentation that these medical accounts were resolved or of his efforts to resolve them. (Items 1, 4-8)

Applicant indicated during his background interview that he hoped to have his outstanding financial accounts resolved by mid-2020. He also indicated that he made changes since incurring these financial delinquencies, and he no longer uses credit cards. He indicated that he lived within his means and had no intention of having any future delinquent debts. He stated in his Answer that he would never risk his job to repay a debt. There is no evidence in the record that Applicant had any financial counseling. (Items 4, 8)

### **Policies**

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 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(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 access to classified information 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, 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 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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “inability to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations” apply. Applicant was unable to pay his debts.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

(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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant failed to provide any documentation of his efforts to resolve his delinquent debts, or that any of his delinquent debts had been resolved. There is no evidence that Applicant had any financial counseling. AG ¶¶ 20(a) 20(b), 20(c), 20(d), and 20(e) are not 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 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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated the financial considerations security concerns.

## 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.x:	Against Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge