



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



In the matter of: )  
)  
) ISCR Case No. 20-00075  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

07/27/2022

**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 October 8, 2020, 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 October 20, 2020, and requested a hearing before an administrative judge. The case was assigned to me on May 4, 2022.

The hearing was convened as scheduled on June 2, 2022. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through K, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE L through N (the exhibits consist of an email and two documents) and admitted without objection.

## Findings of Fact

Applicant is a 36-year-old employee of a defense contractor where he has worked since May 2019. He is a high school graduate. He married in 2018. He has four stepchildren (Tr. at 14-17; Applicant's response to SOR; GE 1, 2)

Applicant has a history of financial problems. He had periods of unemployment and underemployment. He also admitted that he was young and ignorant about finances. He filed a Chapter 7 bankruptcy case in 2011. He listed \$7,295 in unsecured nonpriority claims. His dischargeable debts were discharged in 2012. At his request, his employer transferred him cross country to another state in 2017. When he arrived, there was insufficient work for him, and he was laid off about eight months later. His then fiancée, now wife, moved with him, but was unable to find a job immediately. Her employment has been sporadic since the move. (Tr. at 14-15, 19, 22-23, 40-41; Applicant's response to SOR; GE 1-3; AE I)

The SOR alleges the 2011 bankruptcy, \$3,324 owed in federal income taxes for tax year 2017, and 14 delinquent debts. Except as addressed below, the debts are established through credit reports and Applicant's admissions.

Applicant filed his federal and state income tax returns for tax year 2017 on time, but he mistakenly misreported his income. The IRS issued a refund of \$1,108 in February 2018, but assessed additional taxes in 2019. Applicant made payments totaling \$70 in September and October 2019, and \$50 was withheld from his 2018 refund. The balance, with penalties and interest, in February 2020 was \$3,324 (SOR ¶ 1.o). Applicant entered into an installment agreement with the IRS in March 2020 in which he agreed to pay \$50 per month. He made all of the required payments. Additionally, \$1,226 was withheld from his 2019 refund in April 2020, and \$111 was withheld from his 2020 refund in June 2021. He made the last \$50 payment in May 2022, and in the same month, he paid \$828 to completely pay the back federal taxes. (Applicant's response to SOR; GE 2; AE B, D, E, I, J, M)

Applicant's state income taxes for 2017 were also affected. In December 2020, he started a payment agreement with the state to pay \$100 per month until the balance of \$1,177 was paid in full. The state confirmed that he paid the back taxes in full in June 2021. The back state taxes were not alleged in the SOR. (AE F, G, I, J)

SOR ¶ 1.a alleges \$5,039 owed to an apartment landlord. Applicant stated that in about 2014, he had a week or two left on his lease when the landlord saw him walking his dog, and she told him it was against the apartment's policies to have that breed. He showed her his lease, which did not have a breed restriction. She threatened to evict him. His lease was up shortly thereafter, so he did not think much of it. He stated that the landlord never sent him a letter claiming he owed anything, and the first he heard about the debt was when it showed up on his credit report. He disputed the debt with the credit reporting agencies. It does not appear on the May 2022 credit report. It is unclear if he won his dispute or the account just "aged off" his credit report as beyond

the seven-year reporting window. (Tr. at 25-27; Applicant's response to SOR; GE 1-2, 4-7; AE A, J)

SOR ¶ 1.b alleges \$627 owed to a utility company from 2014. Applicant stated that it was the electricity account in the apartment discussed above. The debt is from 2014. He stated that the electricity company did not shut off the electricity for about a month after he moved out, and he was charged for the electricity for the new tenant. He stated that he thought he paid it. It does not appear on the February 2021 and May 2022 credit reports, but that provides little information about whether it was paid because the debt is beyond the seven-year reporting window. Applicant contacted the creditor after the hearing. The creditor could not locate any records of the account. (Tr. at 27-28; Applicant's response to SOR; GE 1-2, 4-7; AE A, J, L)

Applicant provided inconsistent information about the \$1,084 telecommunications debt alleged in SOR ¶ 1.c. He wrote "Admit" in his response to the SOR, but he testified that it was not his account. The debt is listed on the 2019 and 2020 credit reports as disputed, with December 2013 as when it became delinquent. It does not appear on any later credit report. It is unclear if Applicant won his dispute or the account just "aged off" his credit report as beyond the seven-year reporting window. Applicant contacted the creditor after the hearing. The creditor could not locate any records of the account. (Tr. at 28-29; Applicant's response to SOR; GE 2, 4-7; AE A, J, L)

The 2019 and 2020 credit reports list a \$1,490 medical debt (SOR ¶ 1.d) with the annotation: "Consumer disputes this account information." The name of the creditor is not identified in the credit reports nor the SOR. The activity date is July 2019. The debt does not appear on any later credit report. The account did not age off his credit reports because it was not beyond the seven-year reporting window. Applicant believes this account was for a medical incident that happened on the job. He expected the employer to pay it because it was work related. (Tr. at 29-30; Applicant's response to SOR; GE 2,4-7; AE A, J)

Applicant paid the \$1,052 delinquent debt owed to a bank (SOR ¶ 1.e). He has another credit card with the bank. He is current on that account. (Tr. at 31; Applicant's response to SOR; GE 2, 4-7; AE A)

Applicant paid the \$620 delinquent debt owed to a collection company on behalf of a bank (SOR ¶ 1.f) in May 2020. (Tr. at 31-32; Applicant's response to SOR; GE 2, 4-7; AE A)

Applicant testified that he paid the \$878 delinquent debt owed to a collection company on behalf of a bank (SOR ¶ 1.g). The debt is listed on the 2019 and 2020 credit reports with a balance of \$878. The account became delinquent in 2019. The February 2021 credit report lists the account with a balance of \$673 and a date of last payment of January 2021. The debt does not appear on the 2022 credit report, but it indicates that he has another credit card with the bank. He is current on that account. (Tr. at 32; Applicant's response to SOR; GE 2, 4-7; AE A)

Applicant cosigned an auto loan for his girlfriend's (now wife) car in 2013. After paying the loan for more than four years, the car was repossessed in 2018. The credit reports list the terms of the loan as \$242 per month for 60 months, with a high credit of \$16,964. The balance is reported as \$13,107. The first delinquency is reported as March 2018, and the last payment occurred in October 2018. When the amount owed, the monthly payments, and how long the payments were made are factored together, the balance appears high for a deficiency balance. Applicant has not made any payments since the repossession. (Tr. at 33-34; Applicant's response to SOR; GE 1-2, 4-7; AE A)

SOR ¶¶ 1.i and 1.j allege \$323 and \$3,634 debts owed to the same jewelry store. Applicant stated that he paid the smaller debt, but not the larger debt. The debts are listed on the most recent credit reports as charged off and transferred, with a \$0 balance. He stated that he plans to pay the larger account. (Tr. at 35-36; Applicant's response to SOR; GE 1-2, 4-7; AE A, J)

SOR ¶ 1.k alleges \$242 owed to a collection company on behalf of an Internet and cable television provider. The debt is listed on the July 2019 combined credit report as reported by Experian and TransUnion. It is not listed on any later reports. Applicant thinks he may have paid it, but he does not remember. The company has changed names a few times. Applicant contacted three individuals after the hearing. None of the three could locate any records of the account. (Tr. at 37; Applicant's response to SOR; GE 2, 4-7; AE A, L)

Applicant testified that he paid the \$135 delinquent debt owed to a collection company on behalf of a public utility company (SOR ¶ 1.l) in the state where he used to live. The debt is listed on the July 2019 combined credit report as reported by all three credit reporting agencies, with an activity date of June 2019. It is not listed on any later reports. Applicant contacted the utility company after the hearing. The company could not locate any records of the account. (Tr. at 38; Applicant's response to SOR; GE 2, 4-7; AE A, L)

Applicant admitted owing the \$1,101 and \$788 debts owed to a finance company associated with a retail store (SOR ¶¶ 1.m and 1.n). At the hearing, he testified that he had not made payment arrangements, but he planned to do so. Post-hearing, he submitted a document from the successor to the creditor indicating that he reached out to the creditor in an attempt to resolve the debts. (Tr. at 35-36; Applicant's response to SOR; GE 2, 4-7; AE A, J, L, N)

Applicant stated that his current finances are better. He paid several debts that were not alleged in the SOR. He has a good and stable job. His wife is working at a job where she has a future. They do not live an extravagant lifestyle, and they are able to pay their bills. The charged-off auto loan is the only delinquent debt on his most recent credit report. He realizes that maintaining financial stability is important for his security clearance, his job, and his family. With the exception of whatever he received as a requirement of his bankruptcy, he has not received formal financial counseling. (Tr. at 18-21, 24, 41; GE 2, 4-7; AE A, I)

Applicant submitted letters attesting to his exceptional job performance and moral character. He is praised for his dependability, work ethic, attitude, professionalism, candor, dedication, and trustworthiness. (AE K)

## **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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including a Chapter 7 bankruptcy discharge, multiple delinquent debts, and unpaid federal income tax taxes. AG ¶¶ 19(a), 19(c), and 19(f) 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant and his wife both had periods of unemployment and underemployment. He also admitted that he was young and ignorant about finances.

Applicant entered into an installment agreement with the IRS in March 2020. He made all of the required \$50 payments. Additional funds were withheld from his 2019 and 2020 refunds, and in May 2022, he paid \$828 to completely pay the back federal taxes. He also paid his back state income taxes. He paid some of the SOR debts and several debts that were not alleged in the SOR. He disputed some debts, and he is still in the process of addressing others. The charged-off auto loan is the only delinquent account reflected on his most recent credit report. The other SOR debts were paid and removed by the creditor, successfully disputed, or simply aged off his credit report. He credibly testified that he intends to continue to pay his debts.

Financial cases by their nature involve amounts and figures, but there is no magic number, percentage, equation, or algorithm that can be used to determine whether an applicant has done enough to show that his or her finances are sufficiently in order to warrant a security clearance. It is a case by case determination, wherein the cause of the financial problems and how an applicant has reacted to those problems, along with many other factors, are evaluated. The process is not designed to ensure that debts are collected; the process is designed to evaluate an applicant's judgment, reliability, trustworthiness, and ability to protect classified information.

Applicant's finances are not perfect, but perfection is not required. 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. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are partially or fully applicable. 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 favorable character evidence.

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.

### **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.p:	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.

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Edward W. Loughran  
Administrative Judge