



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



In the matter of: )  
)  
) ISCR Case No. 20-02679  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

08/01/2022

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant did not mitigate the financial considerations and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 9, 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 November 17, 2020, and requested a hearing before an administrative judge. The case was assigned to me on September 17, 2021.

On April 6, 2022, the Defense Office of Hearings and Appeals issued a Notice of Microsoft Teams Video Teleconference Hearing setting the hearing for May 4, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4 into evidence. Applicant objected to GE 4, a Report of Subject's Interview. GE 1 through 3 were admitted into evidence without objection; GE 4 was not admitted.

Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted without objection. The record was held open until May 25, 2022, to give Applicant time to

submit additional documentary evidence. He timely submitted 17 documents that I marked as AE B through R and admitted without objection. I received the hearing transcript on June 7, 2022.

### Motion to Amend SOR

At the conclusion of the hearing, Department Counsel moved to amend the SOR and add two additional allegations based on Applicant's testimony. Applicant did not object to the motion. (Tr. 42-43) The two allegations are as follows:

Guideline F: Add Paragraph 1.i to read as follows: You failed to file, as required, state and federal tax returns for tax years 2018, 2019, 2020, and 2021. As of the date of this hearing the tax returns remain unfiled. (Tr. 37, 42-43)

Add Guideline J: Paragraph 2.a: In December 2020, you were arrested and charged with aggravated battery, a felony. You pleaded guilty and served approximately 13 months in jail. (Tr. 19, 42)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.d, 1.f, 1.g, and 1.h. He denied the debts in SOR ¶¶ 1.b, 1.c., and 1.e.

Applicant is 37 years old and unmarried. He graduated from high school in 2002, and subsequently earned an associate's degree in electronics. He has two children, one with his former girlfriend A, and one with his former girlfriend B. He enlisted in the Marine Corps Reserve in 2003 and was honorably discharged in 2007. He held a security clearance while in the Marines. (Tr. 17-19, 39) After his discharge, he worked in construction from 2007 to 2013. He worked for a defense contractor in the Middle East from about 2015 to 2017. He then started a cruise business with a friend, which he closed in 2018 due to financial problems. In September 2019, he submitted a security clearance application for a job with a different defense contractor and anticipated returning to the Middle East when he received a security clearance. (GE 1, GE 4; AE D)

On December 25, 2020, Applicant became embroiled in a serious physical argument with his former girlfriend B. It became violent and the police were called. He was arrested and charged with aggravated battery, a felony. He pleaded guilty to the charge and was immediately incarcerated. He served 13 months in prison and was released on January 19, 2022. He is on supervised probation for three years and is required to attend counseling, anger management and parenting classes. (Tr. 20-25)

Since his release from prison, Applicant has been working as a forklift operator and is not earning enough money to resolve his debts. He is trying to repair his credit by removing negative inquiries. (Tr. 26-27) He said he lost a lot of money when he had his cruise business between 2017 and 2018, which accounts for some of his delinquent debts. He would like to find a job in the trucking industry that pays more money and would allow him to resolve debts. He lives with girlfriend A and their child. (Tr. 38-41)

Base on credit bureau reports (CBR) from September 2020 and September 2019, the SOR alleged eight delinquent debts totaling about \$93,000, which became delinquent between 2018 and 2020. (GE 2, GE 3) Applicant said he sent letters to all of his creditors a week before the hearing, requesting information about the alleged debts, but had not received a response as of the hearing date. (Tr. 29, 34) The status of each debt is as follows:

1. The debt in SOR ¶ 1.a for \$901 is owed to Midland for a delinquent credit card. It is unresolved. (Tr. 28.)
2. The debt in SOR ¶ 1.b for \$1,127 is owed to Midland for a delinquent credit card. Applicant denied owing it because he does not have any recollection of it. He would pay it if it is his debt. It is unresolved. (Tr. 28.)
3. The debt in SOR ¶ 1.c for \$2,896 is owed to Midland for a delinquent credit card. Applicant denied owing this debt because he believes it is a duplicate of one of the above two debts. He would pay it if it is his debt. It is unresolved. (Tr. 29; AE O)
4. The debt in SOR ¶ 1.d for \$1,340 is owed to a retail store. He recently sent a letter to the creditor about resolving it. It is unresolved. (Tr. 31)
5. The debt in SOR ¶ 1.e for \$1,509 is owed to a credit card company. Applicant denied owing the debt because he believes he paid it. It is unresolved. (Tr. 31)
6. The debt in SOR ¶ 1.f for \$47,035 is owed to a company for a car loan. The car has not been repossessed and Applicant continues to use it. The debt was charged off in 2018. It is unresolved. (Tr. 31-33; GE 2)
7. The debt in SOR ¶ 1.g for \$2,886 is owed to a credit card company. It is unresolved. (Tr. 34)
8. The debt in SOR ¶ 1.h for \$35,488 is owed to a bank for a credit card. It is unresolved. (Tr. 34)

Applicant submitted letters that he sent to the three credit reporting companies, Equifax, Experian, and Transunion, requesting that they remove incorrect personal information about him from their reports, including his name, birthdate, addresses, and employers. He believes some alleged debts are not his responsibility. (AE P, AE Q, AE R).

Applicant admitted that he failed to file his federal and state income tax returns for years 2018, 2019, 2020, and 2021. (Tr. 38) They remain unfiled.

Applicant submitted copies of letters of recommendation that he submitted to the criminal court in August 2021 for purposes of obtaining a recognizance bond hearing. (AE

D) Friends and family members commented on Applicant's hard working character and generous and respectable nature. They stated that the criminal incident with girlfriend B was out of character for him. (AE B, AE C, AE E, AE F, AE G)

### **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 lists conditions that could raise security concerns under AG ¶ 19. The following three 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 accumulated delinquent debts and experienced financial problems, which began in 2018 and continue into the present. He failed to file federal and state income tax returns for years 2018, 2019, 2020, and 2021. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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's financial problems are ongoing and attributable to his failed business in 2018 and his 13-month incarceration from late 2020 to early 2022. While his business problems may have been a circumstance beyond his control, his incarceration was not. He did not address his financial problems before he went to jail. After his release he made modest efforts to contact creditors, but there is no evidence he paid or resolved any of the alleged debts. There is no evidence that he participated in credit or budget counseling or indications that his debts or taxes are being resolved or under control. Applicant did not present sufficient evidence that any of the debts he disputed are not his responsibility; however, he indicated that he intended to pay those that are his responsibility. He did not submit documentation that he has made arrangements with the taxing authorities to file his tax returns. The evidence does not establish mitigation under any of the above mitigating conditions.

#### **Guideline J: Criminal Conduct**

AG ¶ 30 sets out the security concern related to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists one condition that could raise a security concern and may be disqualifying in this case:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In December 2020, Applicant was arrested and charged with aggravated battery, a felony. He pleaded guilty and served approximately 13 months in jail. He was released in January 2022. The evidence establishes both of the above disqualifying conditions.

AG ¶ 32 describes conditions that could mitigate security concerns raised under this guideline:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

There is insufficient evidence to establish the above mitigating conditions. In January 2022, Applicant was released from incarceration and placed on probation for three years. Since his release, he has been working and investigating his delinquent debts. While those are positive factors, sufficient time has not passed since Applicant's felony conviction to establish successful rehabilitation under the above two mitigating conditions.

### **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 Guidelines F and J in my whole-person analysis. I also considered Applicant's service in the Marines and his favorable character evidence. However, at this time, the record evidence does not resolve my concerns about Applicant's eligibility and suitability for a security clearance. He did not mitigate the security concerns raised under the financial considerations and criminal conduct guidelines.

### **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.h:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraph 2.a:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Shari Dam  
Administrative Judge