



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



In the matter of: )  
)  
) ISCR Case No. 21-02400  
)  
Applicant for Security Clearance )

**Appearances**

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

08/12/2022

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Financial Considerations guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of the Case**

On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). In an undated response, Applicant answered the SOR in writing and elected to have his case decided on the written record in lieu of a hearing (Answer). (Item 2)

On January 26, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on January 27, 2022. Applicant received the FORM on February 10, 2022. The FORM notified him that he had an opportunity to file objections and submit additional information in refutation, extenuation, or mitigation within 30 days of receipt of

the FORM. Applicant did not submit any additional documents or file objections to the Government's evidence. Items 1 through 6 are admitted into evidence. I received the case file from the Defense Office of Hearings and Appeals (DOHA) on April 12, 2022.

### **Findings of Fact**

Applicant admitted all six allegations contained in the SOR with explanations. (Item 2)

Applicant is 36 years old and has been married since 2006. They have two minor children. After graduating from high school in 2003, he enlisted in the Marine Corps and served until 2008, when he received an Honorable discharge. He has earned some college credits. He began working for a defense contractor in April 2015. (Item 3)

In April 2020, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3) Applicant was interviewed in October 2020 by a government investigator. During that background interview, Applicant discussed his delinquent debts. He said his financial problems started in 2015 when his father was diagnosed with cancer and his brother needed financial assistance, and he began supporting them. He told the investigator that he intended to resolve his delinquent debts in the future when he had enough money. (Item 4)

Based on Applicant's admissions and credit bureau reports (CBR) from August 2020, and January 2022, the SOR alleged five student loans in collections, totaling \$23,711, and two car loans in collections totaling \$26,753. He acknowledged that he has not made any payments on his student loans since obtaining them between 2008 and 2009. In 2015 and 2017, he took out car loans. (Items 4, 5, and 6) In his Answer, Applicant stated that he contacted all of his creditors in an attempt to settle and resolve the debts, but has been unable to do so because they requested large settlement payments. He asserted that he only had one unresolved car loan and that the SOR alleged a duplicate car loan. According to the August 2020 CBR, those two debts have different account numbers and appear to be unrelated. After receiving the FORM in February 2022, he did not submit evidence documenting that he made any payments on the alleged debts, or that the two alleged car loans debts are the same debt.

Applicant did not submit a written budget, listing his current monthly income and expenses or financial status. He did not present evidence that he participated in credit or budget counseling.

### **Policies**

The national security eligibility action was taken 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 *National Security*

*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG)*, which became effective within the DOD on June 8, 2017.

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a security clearance.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 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.

AG ¶ 19 describes conditions that could raise security concerns. Two may be disqualifying in this case:

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

Applicant admitted that he has old delinquent debts and student loans, which he has been unable to resolve. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could potentially mitigate security concerns arising from Applicant's admitted financial problems:

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant's delinquent debts have been outstanding and unresolved since he took out his student loans between 2008 and 2009, and his car loans in 2015 and 2017. They continue to cast doubt on his reliability. AG ¶ 20(a) does not apply.

Applicant attributed his delinquent debts to a period of time during his father's illness when he helped his father and brother with their financial problems in 2015. Those were circumstances beyond his control, although he chose how to allocate his available funds at the time. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not provide sufficient evidence to demonstrate that he attempted to responsibly manage his debts as they were accumulating. AG ¶ 20(b) applies partially.

Applicant did not provide evidence that he participated in credit or financial counseling. He has not established a budget to show responsible financial management of his delinquent student loans and other financial commitments. The evidence is insufficient to conclude that there are clear indications that Applicant's delinquent debts are under control. AG ¶ 20(c) does not apply. He did not submit documentation that he made a good-faith effort to establish a plan to resolve his debts. AG ¶ 20(d) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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. Applicant served in the Marine Corps for five years and received an Honorable discharge. He has worked for his current employer, a defense contractor, since 2015. Between 2008 and 2009, he took out student loans totaling \$23,700 that are not being resolved. Between 2015 and 2017, he obtained two car loans that are delinquent and total over \$26,750. He submitted no evidence of behavioral changes and the potential for pressure, coercion, or duress remains undiminished. Based on the evidence, and the lack of an established track record of responsible financial management, Applicant failed to meet his burden to mitigate the security concerns raised under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a through 1.g:	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 or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

SHARI DAM  
Administrative Judge