



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



In the matter of: )  
)  
) ISCR Case No. 20-01110  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

09/13/2022

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 20, 2022, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 27, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on March 9, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 3 through 8 (Item 1 is the SOR and Item 2 is a receipt). Applicant submitted a response to the FORM, which included documents marked as AE A through AA. There were no objections to the Items or AEs offered and they are admitted into evidence. The case was assigned to me on May 13, 2022.

### **Findings of Fact**

Applicant denied both allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He has not been married and has two adult children, ages 24 and 25. He has been employed by his present employer since 2017.

The financial allegations alleged in the SOR are supported by Applicant's statements in his May 2018 security clearance application (SCA), his answer to the SOR, his statements made to a government investigator in May 2019, and credit bureau reports (CBR) from November 2021 and August 2018. (Items 3, 4, 5, 6, 7)

SOR ¶ 1.a alleges that Applicant has child-support arrearages totaling approximately \$39,884. In his answer to the SOR, Applicant explained that the same child-support arrearage currently alleged was previously adjudicated at a security clearance hearing in 2010, at which time the balance was \$28,000. At that hearing, he presented evidence that he had established a payment plan to address the debt in which \$400 would be automatically withheld from his monthly wages, with \$247 directed to his ongoing child-support obligation and \$153 applied to the arrearage. The decision implies that the Income Withholding Order was recently established, and Applicant had not yet made any payments as of the May 2010 hearing. Since the decision, the arrearages have grown to the alleged amount. (Items 6, 8)

Applicant disclosed in his May 2018 SCA that he is paying the minimum amount required on his debt, and he is attempting to have it recalculated. He explained in his SOR answer that his child-support payments have been automatically withheld from his wages for many years, but those payments are not reflected in the balance on his credit report. In Applicant's response to the FORM, he provided a copy of the Income Withholding for Support letter sent to his employer in August 2012 requesting \$267 be withheld for child support and \$67 be withheld for past-due child support. In support of his payment efforts, he provided a paystub from one employer for October 2013 that reflected a year-to-date total paid of \$3,083. He provided two paystubs from a different employer from November 2013 and December 2013 that shows the year-to-date amount paid was \$1,370. In his SOR answer, he did not provide any other documentation of payments since 2010. In addition, he provided a document to show his children were enrolled in school in 2013 and he was listed as the parent on their school forms. He provided the same documents in his response to the FORM. (Items 3; AE I, J)

Applicant provided a copy of an email from March 2016, presumably from the case worker for the state where the child support court order was entered. It stated that the state did not add interest to Applicant's child support arrears. The amount accrued is the actual court-ordered amount. The email stated:

We have not received any payments from you since October 1, 2013 when the employer at the time quit withholding. We did receive a \$978.35 payment in June 2015 as a result of a hit on your bank account. I cannot negotiate any amount as long as there is a valid court order in effect, which there is until [child] emancipates in [M]ay. After that, I would be in agreement with the \$250 per month. I have received a notice that a check will be coming in for \$350 around [M]arch 21<sup>st</sup>. Thank you for setting that up. I will go through your case and see what months the support may be able to be removed due to you having the children. I will do an updated affidavit of arrears and send it out to you. (AE F)

Applicant provided receipts to show he made payments of \$250 in April 2016 and May 2016 and payments of \$150 in February 2017, March 2017 and January 2018. The receipts say they were paid by auto pay, but I am unable to determine if the auto pay stopped after May 2016 because the amount was reduced, indicating there was a change. He did not provide proof of consecutive payments. He did not provide other evidence to show payments made since his 2010 hearing, other than the 2013 payments made through his employer. (AE A through E, G, H, I)

Applicant has repeatedly said that he made child-support payments to different states that did not give him credit; that his children lived with him for years so he should not have been paying child support; and that he should be given credit for air fare he paid for the children. He did not provide evidence that he followed up with the case worker in the state where the child-support order was issued to request an adjustment or request a recalculation. If one was made, he did not provide it to show the current amount owed or if the balance was satisfied. He provided a "child support collections" document from a different state from May 2001, which reflected that \$7,242 would be garnished from his wages through his employer at the time. It is unknown if this occurred or how long he worked for his employer. He claims he made payments from 2001 to 2009 to a different state that were never deducted. However, when he had his 2010 hearing, he had a substantial amount of child support in arrears. He further stated that he has tried to correct the child-support issues since 2001, but has been unable because he does not have an attorney in the state where the order was issued to petition the court and it is a financial burden to travel there. (AE K)

Applicant provided with his response to the FORM, a state tax document from 2014 that shows he received unemployment compensation during that tax year. In his 2018 SCA, he does not list any period of unemployment for 2014. He disclosed he was

employed from September 2013 to January 2014 and changed jobs and was employed from February 2014 to January 2017.<sup>1</sup>

Applicant denied owing the medical debt alleged in SOR ¶ 1.b (\$1,071). He disclosed this debt on his 2018 SCA and noted he believed he was double-billed by his insurance company for a back brace. He believes the device was covered by his insurance benefits. He stated that he was in the process of having the collection account removed from his CBR. In his May 2019 interview with a government investigator, he said the debt should have been covered by his insurance company. The debt was incurred in approximately December 2014. He said the issue was between the medical supply company and his insurance company. He was waiting for them to resolve it, but he did not believe he was responsible for this debt. In his response to the FORM, Applicant provided numerous insurance documents. The debt is not reported on the 2018 or 2021 CBRs. Based on the evidence, Applicant has a legitimate dispute and has been battling the insurance companies to resolve it. I find for him on his allegation. (Item 4; AE K, M through AA)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is

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<sup>1</sup> I have not considered any derogatory information not alleged for disqualifying purposes, but may consider it when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

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 as to obtaining 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has known for years that his child-support obligation was in arrears. Despite having years to resolve it, he has not. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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's child-support arrearages have existed for many years. He has repeatedly made numerous claims that he has made payments; should be given credit when the children lived with him; he should be given credit for air fare he paid; and that he made payments to other states that were not credited. He noted on his 2018 SCA that he was having the state where the order was issued recalculate what he owed. It has been four years since that statement, and he has not provided evidence of action he has taken. Applicant may have legitimate claims for why his arrearages should be reduced, but he has provided insufficient evidence to me to make that determination. He needs to

resolve it with the state and he has not. The evidence he provided does not show he has consistently been making payments. Applicant has not resolved his child-support arrearages. There is insufficient evidence this debt was beyond his control. He has not presented evidence that he has acted responsibly, that there are clear indications the debt is being resolved, or he made a good-faith effort to repay the arrearages. AG ¶ 20(a) through AG ¶ 20(d) do not apply.

Applicant disputed the medical debt in SOR ¶ 1.b. He provided numerous documents to support his dispute. His 2021 and 2018 credit reports do not report this debt. I find AG ¶ 20(e) applies to this debt.

### **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.

Insufficient evidence was provided, and Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

### **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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge