



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



In the matter of: )  
)  
) ISCR Case No. 20-03067  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: Sarah B. Bardol, Esq.  
10/31/2022

---

**Decision**

---

RIVERA, Juan J., Administrative Judge:

Applicant failed to present sufficient evidence to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 18, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on June 11, 2021, and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2022. I convened the hearing on June 9, 2022. Government Exhibits (GE) 1 through 8 were admitted into the record without objection. GE 8, the Government’s Discovery Letter, was marked and made part of the record, but it is not substantive evidence.

Applicant Exhibits (AE) 1 through 8, were admitted into the record without objection. I received AE 8 post-hearing. Applicant testified, as reflected in the transcript (Tr.) received on June 16, 2022.

## Procedural Issue

At the hearing, Department Counsel moved to withdraw SOR ¶¶ 1.c, 1.d, and 1.e. I granted the motion without objections. (Tr. 7)

## Findings of Fact

Applicant is 57 years old. He married in 1993, separated in 2007, and his divorce was final in 2010. He has two children of this marriage, a son, age 25, and a daughter, age 23. He received a bachelor's degree in electrical engineering in 1995.

Applicant worked for a large federal contractor between 1983 and March 2012. The Department of Defense (DOD) granted him eligibility for a clearance first in 1985, and later in 2008. He stated that he never had any security issues or concerns, except for those in the SOR. His employer laid him off for economic reasons beyond Applicant's control, and he was unemployed between March 2012 and July 2013. He had difficulty finding another engineering job and became a truck driver in July 2013. He obtained a commercial driver's license and worked as a commercial truck driver until December 2017. Another federal contractor hired him in December 2017, and his current employer and security sponsor hired him in March 2019.

Applicant has continuously worked for federal contractors since 2017, initially making about \$111,000 annually. (Tr. 42) He testified that in 2019, when he started working with his current employer, he was making about \$135,000 a year. He claimed he is currently earning about \$150,000 a year. (Tr. 41-42) I note; however, that his IRS account transcript for tax year 2021 shows his adjusted gross income to be close to \$112,000. (AE 5)

Applicant submitted his most recent security clearance application (SCA) on January 7, 2018, seeking the continuation of his clearance eligibility required for his job. In Section 26 (Financial Record) of his 2018 SCA, he disclosed he filed for a Chapter 13 reorganization in February 2016 (alleged in SOR ¶ 1.a), and was delinquent in his child support payments to a state's child support enforcement agency (alleged in SOR ¶ 1.b - \$59,219 in arrearages).

Applicant explained that his financial problems were the result of his acrimonious divorce, his 13-month period of unemployment, and being underemployed between July 2013 and December 2017. He stated that upon his divorce in 2010, the court required him to pay approximately \$2,000 a month in financial support for both children, and \$2,000 in alimony to his ex-wife. (Tr. 21) Applicant's earnings as a commercial truck driver were less than what he was making before his divorce, and he could not make the court-ordered child support and alimony payments and still pay for his living expenses. He fell behind in his mortgage and homeowner's association payments. He consulted with an attorney who advised him to file for a Chapter 13 reorganization to avoid losing his home.

Applicant filed for Chapter 13 reorganization in February 2016. He participated in the reorganization and made the scheduled payments until July 26, 2019. The bankruptcy

court dismissed his Chapter 13 case because he failed to make the scheduled payments twice. The court order dismissing the Chapter 13 case stated that the “Debtor failed to cure the default in payments under the Debtor’s plan.” (GE 7, pgs. 24, 25, and 37) I note that Applicant repeatedly testified at his hearing that he did not know why the bankruptcy judge dismissed his Chapter 13 case. (Tr. 72-74)

The Chapter 13 Trustee’s Final Report and Account, from November 2019 (GE 7), shows that Applicant paid about \$62,000 into the reorganization plan, and was refunded over \$10,000. The only creditors that received any money were the mortgage holder (\$38,426); the HOA (\$3,377); the IRS (\$231); and Applicant’s bankruptcy attorney (\$6,050). There were 12 additional creditors included in the bankruptcy schedule that received no payments from the Chapter 13 trustee, including a state child support enforcement agency. The remaining creditors’ claims totaled close to \$52,000.

After the dismissal of his Chapter 13 case in July 2019, Applicant did not contact any of his creditors, and he made no payments toward his delinquent debts. At his hearing, he testified that since 2019 he has received no correspondence or collection notices from any of his creditors. Only one of his creditors provided him with an IRS 1099-C (cancellation of debt). (Tr. 60) Although he did not pay his delinquent debts, and his Chapter 13 case was dismissed, Applicant believes he owes no money to any of the bankruptcy-scheduled creditors. The credit reports no longer list the bankruptcy creditors. He claimed he does not know what happened to his unpaid delinquent debts after the Chapter 13 dismissal. (Tr. 59-60) He presented no evidence of any payments made to any of the bankruptcy creditors, except for the child support payments and the alimony payments being garnished from his paycheck.

Applicant described his current financial situation as “fantastic”. He noted he is getting caught up with his finances. (Tr. 32-33) He recently paid up his entire child support obligation in arrears. (AE 8) Both children are now emancipated, and he no longer has a legal financial obligation toward the children. He owes about \$20,000 in alimony to his ex-wife that he is paying via a \$1,000-a-month garnishment of wages.

Applicant’s personal financial statement (AE 6) indicates he owns six vehicles with an aggregate value of over \$110,000. He purchased a used 2019 Tundra for \$52,000 in 2021. He has no money in his savings account and only about \$1,600 in his checking account. He has about \$30,000 in his 401K retirement account, but he took a \$16,000 loan against his retirement account to pay off a debt to his ex-wife.

Applicant presented no documentary evidence of any contacts with his bankruptcy creditors, of any settlements made, of payment agreements established, or of any payments made after the Chapter 13 case dismissal or after receipt of the SOR. Other than the financial counseling required for his Chapter 13 filing in 2016, he presented no evidence showing that he has participated in any recent financial counseling. His personal financial statement shows a net remainder of \$3,060 a month.

Applicant claimed that he takes his responsibilities as a security clearance holder very seriously. He noted that he has had a clearance since age 19. He considers himself to be a trustworthy person who pays his bills and does his job.

## Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established

for issuing a clearance. (See Section 7 of EO 10865; See also EO 12968, Section 3.1(b) (listing 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; and
- (c) a history of not meeting financial obligations.

The SOR alleges, Applicant admitted, and the evidence corroborates he filed for Chapter 13 bankruptcy in 2016, which was dismissed in 2019 (SOR ¶ 1.a); and that he was indebted to a state for court-ordered child support and alimony in arrears. (SOR ¶ 1.b). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

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; 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.

The above mitigating conditions are not applicable to SOR ¶ 1.a, but they apply and mitigate the allegations in SOR ¶ 1.b. Circumstances beyond Applicant's control (2010 divorce, and unemployment and underemployment) caused him to file for a Chapter 13 reorganization in 2016, and could have prevented him from diligently addressing his delinquent debts.

While I accept that Applicant's financial problems were aggravated by circumstances beyond his control, his evidence is insufficient to show that he was financially responsible under his circumstances. Applicant started working for a federal contractor in December 2017, earning \$111,000 a year. His current employer hired him in March 2019, with a starting salary of about \$135,000 a year that has increased to his current earnings of about \$150,000 a year.

Applicant participated in his Chapter 13 process for almost three years (2016-2019) paying about \$62,000. During 2019, he failed to make the required payments to the Chapter 13 trustee, and the court dismissed his case. Applicant's evidence is insufficient to explain the circumstances that led him to miss his bankruptcy payments. Applicant testified that he did not know why the court dismissed his Chapter 13 case. His testimony is not credible.

Following the Chapter 13 case dismissal, Applicant failed to contact the creditors listed in his bankruptcy schedule of creditors. He presented no documentary evidence of efforts to contact his creditors, of payments made, of settlements agreements, or of payment plans established after the case was dismissed or after he received the SOR in 2021. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. Considering his annual earnings since 2017, Applicant's evidence is insufficient to explain why he was unable to address his Chapter 13 financial responsibilities or the delinquent accounts unresolved by the case dismissal.

I resolve the SOR ¶ 1.b allegation for Applicant. His documentary evidence shows that he paid his child support arrears in about May-June 2022, and he is making spousal support payments via a garnishment order.

Considering the evidence as a whole, there is insufficient evidence for a determination that Applicant has been financially responsible and that his financial problems are under control. His financial issues are recent and ongoing. They continue to cast serious doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's financial problems are not 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.

Applicant, 57, has been working for federal contractors, on and off, since he was 19 years old, sometimes while possessing eligibility for a clearance. His financial problems were aggravated by circumstances beyond his control and he filed for Chapter 13 reorganization in 2016, which was dismissed in 2019.

Applicant's evidence is insufficient to explain why he defaulted on his bankruptcy payments, and why he did not address his delinquent accounts after the Chapter 13 case

was dismissed. He did not provide persuasive documentary evidence showing he made specific and reasonable offers to settle the bankruptcy debts. His lack of documented responsible financial action in regard to these debts raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

Of greater concern, impinging on Applicant’s credibility, honesty, and trustworthiness, is his testimony that he did not know why the court dismissed his Chapter 13 case. The record evidence leaves me with serious questions and doubts about Applicant’s eligibility and suitability for a security clearance.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

### **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
Subparagraphs 1.c - 1.e:	Withdrawn

### **Conclusion**

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

---

JUAN J. RIVERA  
Administrative Judge