



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



In the matter of: )  
)  
) ISCR Case No. 20-00009  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2022

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 25, 2021, the Department of Defense 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on July 8, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 15, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 1, 2022, scheduling the hearing for September 27, 2022, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant testified

and offered Applicant Exhibit (AE A). There were no objections to the exhibits, and they were admitted into evidence. The record remained open until October 12, 2022, to permit Applicant to submit documents, which he did, and they were marked as AE B through AE K. There were no objections, they were admitted into evidence, and the record closed. DOHA received the hearing transcript on October 5, 2022.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. His admissions are incorporated into the findings of facts. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He graduated from high school in 2007. He served in the military from 2009 to 2017. He deployed to the Persian Gulf in 2010 and was part of combat operations in Iraq and Afghanistan. He was honorably discharged in the rank of E-5. He married in 2012 and has a 10-year-old child. He began work with a federal contractor in July 2020, earning a salary of \$92,000. Before then, he worked as a nurse's aide from August 2019 to July 2020 with an annual salary of \$26,000. From August 2017 to August 2019, he worked for the Postal Service and attended college. His annual salary was about \$40,000. (Tr. 16-20, 60-61)

Applicant accumulated delinquent debts and attributed his financial problems to a period when he was underemployed after his discharge from the military. He and his wife purchased a home in 2013 that was affordable on his salary. His wife was not working at the time. In 2014, his wife got a job and was earning about \$13 an hour. In late 2014, she became a manager at a retail store and was friends with the owner. Her income increased to almost \$1,000 a week. She had a disagreement with the owner, and lost her job in 2016. Applicant testified that when her salary increased, they made poor financial decisions and lived beyond their means. His wife then got a job with a credit union at a substantially reduced salary, and his son went to daycare. His son has respiratory issues and was frequently sick, which required his wife to miss work, until she finally had to resign due to their son's health. They began to fall behind in paying their debts. (Tr. 21-26, 62-63)

Applicant testified that they could not afford the car payments on the two vehicles they had purchased, so he returned them and purchased two older vehicles. He said he should have considered bankruptcy at the time, but because of pride and stupidity, he did not. (Tr. 25, 31)

In 2017, after he was discharged from the military, Applicant and his family moved back to his home state. He completed a deed in lieu of foreclosure on his house in May 2017. He began to attend college full-time in the fall of 2017 in pursuit of a nursing degree. In 2019, he received his certified nursing degree and began working in the hospital. During this time the COVID pandemic was rampant and he worked on the ward with the COVID patients. He was hoping to complete his nursing degree so he could go back into

the military as an officer in the Nurse Corps. During this time, he had difficulty paying his debts due to low wages. (Tr. 18-19, 25-27)

Applicant testified that through his research he believed much of his debt would be barred by the statute of limitations. He later learned that his financial issues were a security concern, and he realized he needed to address his delinquencies. He acknowledged that when he was interviewed by a government investigator in August 2020, he told the investigator that he was willing and able to pay each debt. He testified that at that time he was willing to pay the debts, but he did not understand the full ramification of his failure to act expeditiously. He credibly testified that he did not fully grasp the importance of resolving his delinquent debt until his security clearance became an issue. (Tr. 28, 59-62)

Applicant further testified that when his wife had to resign from her job due to his son's health issues, his underemployment severely impacted their ability to pay their debts. She is now working full time, and they are able to meet their monthly expenses. At the time, he considered letting the statute of limitations run on his debts so he could be in a better financial situation. (Tr. 17)

Applicant testified that he used his tax refund to pay his student loans, but did not begin to address his other delinquent debts until after he received the SOR in June 2021. He withdrew funds from his military Thrift Savings Plan to pay some of the debts. (Tr. 30-31)

The debts in SOR ¶¶ 1.a (\$12,988), 1.b (\$10,467), and 1.c (\$7,630) are all to the same creditor and includes a repossessed vehicle. Applicant took out a loan for approximately \$9,000 and used it to settle the above debts in November 2021. He settled them for \$3,000, \$2,800, and \$2,000 respectively. His monthly loan payment is \$339 and he is current on his payments. He provided IRS Form 1099-C (cancellation of debt) for the balances canceled in SOR ¶¶ 1.a and 1.c. These debts are resolved. (Tr. 32-49; GE 3, 4; AE A, C, H)

The debt in SOR ¶ 1.d (\$5,171) is a credit card that Applicant had difficulty paying after his wife lost her job in 2016. He began paying \$200 a month on it in August 2021 and then settled it for \$1,953 in June 2022. He testified he used money he had saved to settle the debt. This debt is resolved. (Tr. 49-51; GE 3, 4; AE A)

Applicant testified that the money he withdrew from his current 401K pension plan was used to pay the debts in SOR ¶¶ 1.e (\$889), 1.f (\$870), 1.g (\$592) and 1.h (\$450). He provided supporting documents. (Tr. 51-57; GE 3, 4; AE A, B, D, I)

Applicant believed the debt in SOR ¶ 1.i (\$3,808) was a debt consolidation loan and he has not yet reached a settlement to resolve the debt. It was reported on his July 2020 and May 2021 credit reports, but not on his September 2022 credit report. He intends to resolve it. (Tr. 57; GE 3, 4; AE A, K)

Applicant took full responsibility for his financial issues and understands that he should have addressed his delinquent debts earlier. He worked hard to rectify them albeit later than he should have. He has taken significant steps to reduce his delinquencies. He and his wife provide financial support to her parents. They have made significant financial strides and their finances are stable. He understands the gravity of his financial situation and is committed to ensuring his future finances remain in order.

### **Policies**

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 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 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.

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

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

Applicant's had numerous delinquent debts that began accumulating in approximately 2016 that he was unable to pay. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributes his financial issues to a period of underemployment and his son's medical issues that resulted in his wife having to quit her job. These conditions were beyond his control. He also testified that for a period of time when his wife was earning a significant salary they lived beyond their means, which was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. This mitigating condition has limited application because Applicant did not begin to address his delinquent debts until after he received the SOR.

When Applicant fully grasped the security clearance significance of his failure to pay his delinquent debts, he began to diligently resolve them. He made good-faith efforts to pay and settle all of his debt. He provided documents to support his efforts. He has one remaining debt that he intends to resolve, but has not yet reached a settlement with the creditor. There are clear indications that his financial issues are being resolved and under control. I found Applicant's testimony to be honest and forthcoming. He readily admitted he made some poor financial choices and was looking for options in resolving them. His underemployment and son's health issues which impacted his wife's employment were detrimental to his financial stability, but so were some of his poor choices. I believe he has learned a valuable lesson and do not believe he will have future financial issues. He has resolved all but one debt, but I believe he is committed to resolving it. AG ¶ 20(a) and 20(c) have some applicability. AG ¶ 20(d) applies to the debts he has resolved.

## 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.)

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a track record of paying his debts.

Applicant had numerous delinquent debts. He resolved all but one. While his financial state is not perfect, perfection is not required. He has been aggressively

addressing his delinquent accounts. His failing is that he did not begin to do so until after he received the SOR, which raised concerns. I considered his military service, his underemployment, his son's health issues, and his medical service during the pandemic. I found Applicant was honest and credible in his explanations. I believe his financial problems are in his past. Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising 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: FOR APPLICANT

Subparagraph 1.a - 1.i: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge