



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00434
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

10/20/2022

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**Decision**

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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 April 21, 2021, the Department of Defense (DOD) 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.

On May 24, 2021, Applicant answered the SOR 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 August 30, 2022, scheduling the hearing for September 29, 2022, by Microsoft Teams. The hearing was

held as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant testified and did not offer any exhibits. There were no objections to any exhibits, and they were admitted into evidence. DOHA received the hearing transcript on October 12, 2022.

### **Findings of Fact**

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

Applicant is 58 years old. He is a high school graduate and served in the military from 1999 until he retired in 2019 in the paygrade E-6. He married in 1995 and has been separated from his wife since 2017. Before then, they had intermittent contact from 2015 to 2017. He testified he does not know where she lives. He does not have children. (Tr. 17-20)

Applicant presently cohabitates with a female friend who has a toddler child. She did not work during the COVID pandemic and recently returned to work. She does not contribute to the household expenses. Applicant purchased her a car in January 2022 and pays the \$600 monthly payments. (Tr. 46-50)

Applicant has worked for a federal contractor since his retirement from the military. He stated his annual salary is approximately \$66,000. He receives \$1,700 a month from his military pension, and \$2,000 in veteran's disability. He said that at the end of the month, after paying all of his expenses, he has several hundred dollars remaining. He has minimal savings. (Tr. 20-21)

The SOR alleges delinquent debts totaling approximately \$70,363. Applicant contacted the creditor for the debt alleged in SOR ¶ 1.a (\$388), which was for car insurance. He believed he had canceled the insurance, but the creditor disagreed. The debt remains unresolved. Applicant has not contacted any of the other creditors for the debts alleged in SOR ¶¶ 1.b through 1.k. He testified that he has not made any payments on any of the alleged debts because he does not have the money. (Tr. 22-26)

The debts alleged in the SOR are corroborated by Applicant's admissions in his answer to the SOR, his statement to a government investigator, his testimony, and credit reports from June 2020 and February 2021. (Answer to the SOR, GE 1, 2, 3, 4)

Applicant attributed his financial problems to his wife. They purchased a house in 2006 that cost more than he thought they could afford. They owned a triplex townhouse that they rented and intended to use the rent from it to help pay the mortgage on the new home. Applicant received orders to move overseas shortly after they purchased the house. His wife did not want to move and stayed in the United States. She was responsible for collecting the rent on the triplex. Applicant paid the bills. In 2009, he noticed that there were insufficient funds in their shared bank account to pay their mortgage. He asked his wife about it, and she said she needed the money to pay bills,

and she did not have time to collect the rent. Applicant later learned the townhouse had been foreclosed and was for sale. He continued to make the mortgage payments on the marital home. (Tr. 21, 40-45)

When Applicant returned from overseas, he and his wife lived in the marital home together, but were separated. He told the investigator that he was out to sea about half the time until he received orders in 2015 to move to a new state. His wife did not accompany him. In around 2018, he noticed that his wife was transferring money out of their joint account where his pay was deposited, to an account he did not have access. Because she took the money, he was unable to pay the mortgage on the marital home. The second time she transferred his pay to another account, she told him she had to send money to her family overseas. He then closed the account and opened an account in his individual name that she did not have access. (Tr. 45-46)

Applicant testified that in about September 2017, his wife contacted his military command to complain that he was not providing her support. He was required to provide her one-third of his pay. Because he was paying the mortgage on the marital home, rent for where he was now living separately, both of their car loans, and other expenses, he was unable to pay the other debts with the added penalties and interest. In August 2019, he retired from the military and was no longer required to pay monthly spousal payments. He testified that at this point, he was overwhelmed with the amount of his debt that he did not know where to start and could not afford to pay his delinquencies. (Tr. 25, 29-31, 45-46)

During Applicant's June 2020 interview with a government investigator, he said that he had contacted the creditor for the debt in SOR ¶ 1.f (\$4,161 - charged off September 2017) and arranged to pay \$100 monthly payments. He said the creditor continued to charge him late fees of \$45 a month, which he thought was unfair because his payments were primarily going towards the late fees and minimally reducing the balance owed. The creditor refused to remove the late fees, so Applicant decided to stop making the payments and told the investigator he had no intention of paying the debt. (GE 2)

Regarding the remaining debts in the SOR, Applicant told the investigator he had no intention of repaying them. He explained that he was frustrated with repaying the accounts and the associated fees and the only way he would pay them was if he won the lottery. He told the investigator that he did not intend to file for divorce because he did not want his wife to receive half of his military pension and continue to live off of his financial support. At his hearing, he said he was angry at the time about everything when he made the statement that he did not intend to pay the debts and now he is looking towards the future. He is haunted by the delinquent debts hanging over his head and his inability to move forward financially. He hopes to resolve them, but has not taken any action. (Tr. 31-35; GE 2)

Applicant has a credit card that he owes about \$9,000. He tries to make more than the minimum payment each month, and it is not delinquent. He began using a credit repair

company, but realized for his \$50 monthly payment, all it was doing was providing him copies of his credit reports. (Tr. 52-54)

When asked about if he had timely file his federal tax returns in the past, Applicant testified that he had not filed his 2020 and 2021 federal income tax returns. He filed an extension for his 2020 tax return, but when he realized he did not have the money to pay the tax owed, he chose not to file. He repeated his conduct when he failed to file his 2021 income tax return. He did not file an extension. Both tax years remain unfiled and it is unknown if he owes taxes or the amount. He believed he may owe about \$1,000 for tax year 2020. He has not contacted the IRS to make payment arrangements for his delinquent taxes. It is unknown if he owes federal income taxes for 2021.<sup>1</sup> (Tr. 54-60)

Applicant testified that he is not a risk to national security and he would never succumb to blackmail. He stated he has not dissolved his marriage because he does not know where his wife is living. (Tr. 60)

### **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

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<sup>1</sup> Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be used in making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

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 has numerous delinquent debts that began accumulating in about 2017 and are unresolved. 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 documentary proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributes his financial issues to his wife mismanaging their money and taking money from their joint account that was earmarked for certain expenses and using

it for other things. Applicant has not addressed or resolved any of the debts alleged in the SOR. AG ¶ 20(a) does not apply. His financial issues are recent and ongoing. His wife's mismanagement is partially beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been aware for years of his wife's spending habits, her inattention to their financial obligations, her mismanagement of their finances, and her willingness to abscond with money from their joint account. He has not been required to provide her support since his retirement in 2019. He does not deny the debts he owes, but told the investigator that he was unhappy with the interest and penalties that were added to his debts and was not going to pay them.

At his hearing, Applicant said he wants to resolve his delinquent debts, but is financially unable. He did not provide evidence that he is taking action on any of his delinquent debts. There is no evidence he has participated in financial counseling or that his financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply. AG ¶ 20(b) has minimal application because there is insufficient evidence to conclude Applicant has acted responsibly under the circumstances.

Applicant disputed one debt that he said he attempted to resolve with the creditor over an insurance bill received after he had moved. He did not provide documented proof to substantiate the basis of his dispute or evidence of his effort to resolve the issue. AG ¶ 20(e) does not apply.

### **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

