



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



In the matter of: )  
)  
) ISCR Case No. 21-01375  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2022

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

**Statement of the Case**

On October 13, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented by DOD on June 8, 2017.

Applicant elected in his response to the SOR (Answer) to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on March 30, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to

refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 7, 2022, and submitted an undated response to the Government's FORM. I marked his response to the Government's Form as Applicant's Exhibit (AE) A, and admitted it in evidence without objection. The case was assigned to me on July 25, 2022. Government Exhibit (GE) 1 is the SOR and the Answer. The Government's documents identified as Government's Exhibits (GE) 2 through 11 in the FORM are admitted in evidence without objection.

### **Findings of Fact**

Applicant admitted all of the SOR allegations in his Answer. He is 61 years old. He married in 2002 and divorced in 2017. The first security clearance application in the record is from October 2011 (SCA 1), and the second is from February 2020 (SCA 2). As of the date of SCA 2, he did not have any children. He owned a previous home from 2005 to 2010. He purchased another home in February 2015, and his ex-spouse has been the sole resident since their separation in June 2016. He obtained a bachelor's degree in 1983 and a master's degree in 1987. (GE 1, 2, 3, 4)

Applicant served honorably in the U.S. military on active duty from 1983 to 1992. He served honorably in the reserves from 1994 to 2011. He worked for the DOD from 1998 to 1999. He has worked for various DOD contractors since approximately 2008, to include periods in which he worked in Afghanistan from March 2011 to May 2013 and February 2014 to June 2016. He was unemployed, after a layoff, from December 2009 to March 2011. He was also unemployed from May 2013 to September 2013 and June 2016 to December 2016, after resigning from his positions in Afghanistan. As of SCA 2, he worked as a senior advisor for his employer, a DOD contractor, since July 2019. He was first granted a security clearance in approximately 1984. (GE 2, 3, 4)

The SOR alleged that Applicant petitioned for Chapter 13 bankruptcy in May 2020, in which he claimed approximately \$331,810 in outstanding liabilities, and that his bankruptcy petition was dismissed in June 2020 based upon his motion for dismissal (SOR ¶ 1.a). It also alleged that he had six delinquent consumer debts, totaling \$322,575 (SOR ¶¶ 1.b – 1.g). In addition to his admissions in his Answer, Applicant's bankruptcy case and consumer debts are established by bankruptcy court records. He also disclosed and discussed his delinquent debts on SCA 2 and during background interviews from March 2020 and September 2020. A credit report from March 2020 also reports Applicant's delinquent consumer debts. (GE 1 - 11)

When Applicant completed SCA 1, he disclosed that he was experiencing financial problems. He attributed them to his period of unemployment from 2009 to 2011. He supported himself with personal savings and unemployment benefits. He stated that he had worked with a debt settlement company (Company A) since early 2010, and Company A provided him with credit counseling; was negotiating settlements for five of his delinquent debts that totaled \$57,300; and settled two of his five debts. He intended to resolve his remaining delinquent debts that were not being handled by Company A with the income he received from being re-employed since April 2011. He

short sold his home in July 2010, used the proceeds to pay his outstanding mortgage, and stated that the remaining balance was written off by the mortgage company. (GE 3)

In SCA 2 and during his March 2020 background interview, Applicant again disclosed that he was having financial problems. He cited his divorce as the reason for his delinquent debts and bankruptcy. In addition to his living expenses, he was assigned responsibility for the debts incurred during his marriage and he was ordered to pay attorney's fees for his ex-spouse and alimony. He became overwhelmed. He acknowledged during his March 2020 background interview that he did not live within his means while maintaining his and his ex-spouse's households, and stated that he made changes that would allow him to resolve his debts. He stated in SCA 2 and during his March 2020 background interview that he contracted with a credit counseling service (Company B) from May 2019 through July 2023, at \$894 monthly. Company B provided him with credit counseling; was negotiating settlements for five of his debts that totaled \$67,571; and settled one of his five debts. The September 2020 background interview reflected that Applicant provided documentation corroborating his contract and payments to Company B beginning in May 2019. (GE 2, 4; AE A)

In May 2020, Applicant petitioned for Chapter 13 bankruptcy, as previously discussed (SOR ¶ 1.a). He listed as liabilities all of his consumer debts alleged in the SOR (SOR ¶¶ 1.b - 1.g). Court records reflect that Applicant voluntarily sought dismissal of his Chapter 13 bankruptcy petition in June 2020, "as he is unable to move forward at this time," and the court dismissed his case without a discharge. He stated in his Answer that he was working with a credit counseling service (Company C) to "remove this item." He also explained that he chose to withdraw his bankruptcy petition because he and his ex-spouse agreed that she would instead petition for bankruptcy, and he would pay her additional money in alimony monthly to help her pay the outstanding mortgage so that she could obtain a loan to buy the house from under him. (GE 1, 6, 7, 8; AE A)

SOR ¶ 1.b is for a \$12,087 account in collection. Applicant acknowledged in SCA 2 that he had a debt to this creditor for approximately \$13,000, and he indicated during his March 2020 background interview that he overlooked and then forgot about this debt, and he would pay it when he was able to do so. He listed this debt in his Chapter 13 bankruptcy petition. In November 2021, he entered into an agreement with a debt relief service (Company D) to assist him with settling this debt. (GE 1, 2, 4, 5, 6, 7, 8, 9)

SOR ¶ 1.c is for a \$10,761 account in collection. Applicant indicated during his March 2020 background interview and stated in his Answer that Company B was in the process of negotiating a settlement on this debt. He listed this debt in his Chapter 13 bankruptcy petition. In March 2021, he agreed to settle this debt for \$4,842. He did not provide proof of payment. (GE 1, 4, 5, 6, 7, 8, 10)

SOR ¶ 1.d is for a \$17,219 charged-off account. Applicant indicated during his March 2020 background interview this was a personal loan. He listed this debt in his Chapter 13 bankruptcy petition. He indicated during his March 2020 background

interview that Company B was in the process of negotiating a settlement on this debt. In his Answer, he stated that he was working with Company C to resolve this debt. (GE 1, 4, 5, 6, 7, 8,)

SOR ¶ 1.e is for a \$72,641 past-due mortgage account, in foreclosure with a total balance of \$235,471. In SCA 2, Applicant stated that he and his ex-spouse made arrangements for him to pay her the past-due mortgage, and she would make the mortgage payments going forward, so that she could keep the house. He acknowledged during his March 2020 background interview that the home was in foreclosure. He indicated that his ex-spouse was under a court agreement from their divorce to buy him out of this home by June 2020. He listed this debt in his Chapter 13 bankruptcy petition. He stated in his Answer that his ex-spouse was paying the monthly mortgage through her bankruptcy petition and he was assisting her by paying her additional money in alimony monthly, as previously discussed. He stated that the outstanding principal and arrears was \$218,141. A December 2021 mortgage statement from the creditor notified him that a payment of \$23,695 was due in January 2022, and his outstanding balance of \$166,801 did not account for any amount that was past due before he petitioned for bankruptcy. In his response to the Government's FORM, he stated that he "was able to pay off my ex-wife's bankruptcy (Trustees) to clear all the arrears mortgage . . ." with an inheritance that he had recently received, and that his ex-spouse was now responsible for paying the mortgage. (GE 1, 3, 4, 5, 6, 7, 8, 11; AE A)

SOR ¶ 1.f is for a \$25,182 charged-off account. Applicant indicated during his March 2020 background interview that Company B was in the process of negotiating a settlement on this debt. He listed this debt in his Chapter 13 bankruptcy petition. In his Answer, he stated that he was working with Company C to resolve this debt. (GE 1, 4, 5, 6, 7, 8)

SOR ¶ 1.g is for a \$21,855 charged-off account. Applicant indicated during his March 2020 background interview that this was for a joint account with his ex-spouse. He indicated that she used this card while he worked overseas. He indicated that he would try to settle this debt after his obligations to his ex-spouse decreased. He listed this debt in his Chapter 13 bankruptcy petition. In his Answer, he stated that he was working with Company C to resolve this debt. (GE 1, 4, 5, 6, 7, 8)

Applicant stated in SCA 2 and during his March 2020 background interview that he was living paycheck to paycheck. He received financial counseling in May 2020 through his bankruptcy case. (GE 2, 4, 6, 7, 8)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(a), 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 access to classified information 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “inability to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant has a history of not paying his debts and being unable to do so. The above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

(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.

Conditions beyond Applicant’s control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He received financial counseling through his Chapter 13 bankruptcy. However, although he petitioned for Chapter 13 bankruptcy in May 2020 in an attempt to get control of his finances, his bankruptcy case was voluntarily dismissed within a month of his petition because he was unable to move forward. His claims that he sought dismissal of his bankruptcy petition in order to assist his ex-spouse with her bankruptcy petition so that she could resolve the outstanding mortgage and buy the house from him, and that he paid the outstanding mortgage through an inheritance, are uncorroborated. He did not provide documentation to corroborate his claimed efforts to resolve his delinquent consumer

debts through Company B, C, or D. He did not provide proof of payment to corroborate his claim that he settled SOR ¶ 1.c for \$4,482. I find that Applicant's financial difficulties continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not applicable.

### **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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated the financial considerations security concerns.

### **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 |
| Subparagraphs 1.a - 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 interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge