



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 21-02493 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
 For Applicant: *Pro Se*  
 10/26/2022

**Decision**

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on June 19, 2019. On December 20, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant received the SOR and submitted his response on January 7, 2022, electing to have a hearing.

The case was assigned to me on June 8, 2022. On July 18, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 2, 2022. I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the July 18, 2022 case management order as HE I; Department Counsel’s exhibit list as HE II; and Department Counsel’s May 19, 2022 discovery letter as HE III. Applicant testified and did not submit any exhibits. Department Counsel submitted four exhibits, which I marked as Government Exhibits (GE) 1 through 4. GE 1, 3, and 4 were admitted without objection. I admitted GE 2, an August 2022 credit report, over Applicant’s objection to it being outdated. DOHA received the transcript (Tr.) on August 12, 2022.

At the hearing, per Applicant's request, I held the record open until August 14, 2022, to allow him to submit documentation. He timely submitted documentation which I marked as Applicant Exhibits (AE) A through C. They were admitted without objection, and the record closed.

### **Findings of Fact**

Applicant is 33 years old and has an almost 13-year-old son from his first marriage. He was married from January 2009 to March 2012 and from April 2019 to sometime in 2020. Both marriages ended in divorce. As of the hearing date, he had been with his current partner for a little over a year. Since receiving his high school diploma in 2008, he attended approximately three years of college-level courses, but did not receive a degree. In May 2019, he received a certificate in coding. He has worked as a software developer for his current employer since June 2019. (GE 1; Tr. 10-11, 21-30)

Applicant served on active duty in the U.S. Navy as a Cryptologic Technician Interpretive from July 2008 to July 2014, until he was honorably discharged as a second class petty officer (CTI2). He was previously granted a Top Secret clearance with access to Sensitive Compartmented Information (TS/SCI) while on active duty in the Navy. At the time of the hearing, he did not hold an active security clearance. (GE 1; Tr. 10-11, 21-30)

The SOR alleged two delinquent debts, totaling \$20,937. Applicant denied SOR ¶ 1.a, a \$14,909 consumer debt that was opened in May 2011, and placed for collection in approximately January 2015. He stated in his answer to the SOR, "This debt is no longer collectable as it has passed statute of limitations and no longer appears on my credit report." He admitted SOR ¶ 1.b, a \$6,028 automobile debt that was opened in June 2014 and placed for collection in June 2016. He stated in his answer to the SOR, "While this debt does exist on my credit report it will pass statute of limitations either this month or in April, then no longer be collectable." (Answer, GE 2 at 2; GE 3 at 6)

Applicant attributes his financial issues to his first divorce and periods of unemployment and underemployment. He was unemployed from January 2019 to May 2019. From April 2016 to April 2017, he was in school full time and not employed. When he left active duty in 2014, he did not have a job "lined up" for when he returned home. He used the Servicemen's Readjustment Act of 1944 (GI Bill) to attend college courses, and it was only sufficient to pay for some of his expenses, such as housing. "I wasn't able to cover the large debts that I had left, so I kind of just let them slide. It was a bad decision, but I couldn't make it work at the time." (GE 1; GE 4; AE A; Tr. 18)

In June 2019, Applicant disclosed both of the debts alleged in SOR in his SCA. He indicated that he intended to "contact a credit assistance service or [his] bank about debt consolidation, to get all [his] unpaid debts together and clear them. With the debt and income [he] had [he] was unable to cover payments and be in a livable state. Now with a stable job and income, [his] first priority is to clear all [his] debts." (GE 1 at 46-47)

In October 2019, Applicant was interviewed by a Government investigator, and his financial issues were discussed. At that time, he did not refute his responsibility for

the two debts alleged in the SOR. He told the investigator that after recently moving from State A to State B, his income had doubled and his then wife (second) also had a stable job. Their top priority was to resolve their outstanding debts and contact a debt consolidator. (GE 4 at 2-3)

At the hearing, Applicant testified that he had forgotten about his delinquent debts until 2019, when he applied for a top secret security clearance for his current job. At some point in 2019 or 2020, after his October 2019 interview, Applicant contacted a credit-consolidation company. He was told he could consolidate his debt, pay a fee to the company, and pay his debts for several years, or he could wait until the seven-year statute of limitations (SOL) expired (for the two debts alleged in the SOR). He did not ask for advice as to how relying on the expirations of the SOL would affect his ability to obtain a security clearance. He could afford to make payments toward the two alleged SOR debts, but he reasoned:

[I] would probably still be paying on them for another few years unless I lump sum paid them if I could, now that I have a lot of money. But the ... hitting of the statute of limitations and no longer being collectable was kind of my plan at that point. (GE 4; Tr. 19, 33-34, 40-44)

In July 2022, Applicant purchased a home for \$285,000. He used the GI Bill to purchase it and could not afford a down payment. As of the hearing, he had not yet made a payment, nor had his partner moved in with him to share the expenses of the house. (Tr. 20-21, 28, 46)

Applicant's 2021 credit report reflects that he had two other smaller delinquent debts that he paid in March 2021 (\$221 – car insurance and \$1,441 – cellular phone) and one debt (\$1,878 – education related) that was resolved through the confiscation of his federal income tax refund. He paid the two unalleged debts, because they were placed for collection in October 2020 and December 2017, respectively, and the statute of limitations did not apply to them. (GE 3; Tr. 19, 41-43)

Applicant testified that the \$14,909 personal loan or credit card alleged in SOR ¶ 1.a, was opened in May 2011, and used primarily to pay for vehicle repairs. He stopped paying this debt shortly after he left active duty in July 2014. He initially tried to negotiate lower payments, and then stopped making payments. The creditor attempted to collect the debt, but he did not have the funds to pay it. He has not been in contact with the creditor since approximately 2014, and the debt fell off his credit report in approximately September 2021. He did not provide documentation as to the relevant state's SOL. (GE 1-4; AE A; Tr. 31-34, 44)

When Applicant was unable to adequately repair the vehicle mentioned above, he purchased a new car when he returned to his hometown in 2014. He was unable to make the payments on the loan, and it was repossessed approximately one or two years after he purchased it. The credit reports indicate that his last payment was made in June 2016. The \$6,028 balance of the car loan is alleged in SOR ¶ 1.b. He did nothing to try to address this debt after the repossession other than letting the statute of limitations run its

course. This debt fell off of his credit report in approximately February 2022. He did not provide documentation as to the relevant state's SOL. (GE 1-4; AE A; Tr. 34-36, 39-40, 44)

Applicant's net monthly income is \$4,800, and he has a monthly remainder of between \$800 and \$1,000. Other than the brief credit counseling that he attended in 2019 or 2020, he has sought no other financial counseling services. At the time of the hearing, he had \$300 in savings. He does not use a written budget. He is not required to pay child support for his son. The August 2022 credit report that he submitted after the hearing reflects no new delinquent debts. (AE C; Tr. 23, 45-51)

According to Applicant's DD-214, he received the following awards and decorations while serving in the Navy: Good Conduct Medal (2<sup>nd</sup> Award); National Defense Service Medal; and Global War on Terrorism Service Medal. (AE B)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 concern under Guideline F (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 . . . .

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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; and
- (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.

Applicant experienced a difficult transition period after he left active duty in the Navy in July 2014. He allowed a credit card to become delinquent. Additionally, he purchased a new vehicle that he owned for a year or two before he stopped making payments, which resulted in the vehicle's repossession. He made no attempts to resolve either of these debts, totaling \$20,937, until he reapplied for a security clearance in June 2019. In his SCA, he acknowledged the debts underlying both SOR allegations and indicated that it was his intent to resolve them. He reiterated this intent during his October 2019 interview with a government investigator.

Applicant met with a credit-consolidation company in 2019 or 2020 and learned that both of these debts were approximately 18 months away from the expiration of the SOL. Upon learning this information, he decided against establishing payment arrangements or making payments on his delinquent accounts. He did not provide documentation from the credit-consolidation company he consulted or other documentation indicating what state's SOL is applicable to each SOR allegation. Although neither of these debts appear in his August 2022 credit report, the Appeal Board has held that reliance upon a debt falling off of a credit report is not meaningful evidence of debt resolution. Additionally, even if neither of the alleged debts is legally enforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to pay it in a timely manner.

In this case, Applicant acknowledged at the hearing that he could afford to make payments toward SOR allegations, but chose not to do so. He repaid two smaller delinquent debts in March 2021, because they were newer and the SOL was not applicable to them. This behavior does not reflect financial responsibility. He has not demonstrated he has acted responsibly under the circumstances to address and resolve his delinquent debts in a timely manner. Mitigation under AG ¶¶ 20(a) and 20(b) was not established.

### **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;

