



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



In the matter of:	)	
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	)	ISCR Case No. 22-00080
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

10/28/2022

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on November 7, 2018. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on February 19, 2020, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On January 19, 2022, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) in lieu of a hearing. On March 28, 2022, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. DOHA sent the FORM to Applicant on March 29, 2022, who received the FORM on April 19, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He responded to the FORM on May 9, 2022 (Response), to which the Government did not object. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 and the Response are admitted without objection. The case was assigned to me on July 21, 2022.

### **Findings of Fact**

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 47 years old, married twice and divorced twice. The most recent divorce was in October 2016. He has two adult stepsons and one adult son. He enlisted in the United States Marine Corps and served on active duty from September 1994 until his honorable discharge in April 2002. From July 2003 to August 2004, he attended a technical school. Due to a lay-off, he was unemployed from October 2016 until May 2017. His 2016 divorce, which led to alimony and child support obligations, also contributed to his financial problems. (Item 3.) Since May 2017, he has been employed by a defense contractor that is also his sponsor. (Item 3; Response.) Neither the Government nor Applicant offered any explanation for the nearly two-year delay between the issuance of the SOR and Applicant's Answer. The Government did not object to Applicant's delay in Answering the SOR.

In Applicant's Response, he submitted documents from a credit repair agency showing that two unalleged debts had been paid in full. The first debt stated no amount. The second debt was settled for \$587 on a balance due of \$1,467. Those resolutions were accomplished in February and March 2021, respectively. (Response.)

The SOR alleged five delinquent debts either charged off or in collection totaling \$56,452. (Item 1.) All five of the SOR debts are supported by the December 15, 2018 credit report. (Item 4.) Only SOR ¶ 1.d. appears on the March 7, 2022 credit report, which is the most recent report. The other four SOR debts are not reported on the most recent report. (Item 5.) Applicant admitted all allegations, with brief comments that are discussed below. (Item 2.)

SOR ¶ 1.a. is an account in collection for \$116. (Item 1.) Applicant's admission stated: "Account has been satisfied." (Item 2.) He provided a cancelled check showing he paid this in full. (Response.) This debt has been resolved.

SOR ¶ 1.b. is an account in collection for \$4,024. (Item 1.) This account was in dispute. (Item 4.) Applicant's admission stated: "Account has been satisfied." (Item 2.) Applicant's credit repair agency's document indicates that he did not pay the debt, rather

the debt was successfully disputed on the basis that the collection agency was unable to verify the account. (Response.) This debt has been resolved.

SOR ¶ 1.c. is an account in collection for \$282. (Item 1.) Applicant's admission stated: "Account has been satisfied." (Item 2.) Applicant submitted a document that shows this account was paid in full (\$282) in September 2020. (Response.) This debt has been resolved.

SOR ¶ 1.d. is an account charged off for \$51,825. (Item 1.) Applicant's admission stated: "Account amount has been lowered." (Item 2.) Applicant submitted a March 3, 2021 document from his credit repair agency that the creditor agreed to "adjust account balance." (Response.) The most recent credit report confirms a reduced balance of \$41,876. (Item 5.) He stated: "The only thing I have not paid is [Bank D] and that is do [sic] to them writing the debt off." This debt's balance has been reduced by \$9,949.

SOR ¶ 1.e. is an account in collection for \$205. (Item 1.) Applicant's admission stated: "Account has been satisfied." (Item 2.) Applicant submitted a May 5, 2022 document that shows the account settled for less than full balance (\$151). (Response.) This debt has been resolved.

Four of the five SOR debts went into collections between August 2016 and October 2017 and the fifth joining in December 2018. (Item 4.)

### **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

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

The security concern relating to Guideline F 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

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

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and 19(c) apply.

Guideline F 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;

- (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 . . . and provides evidence of actions to resolve the issue.

The next inquiry is whether any mitigating conditions apply. At the outset, the Appeals Board has consistently held that an applicant is not required to resolve every debt alleged in the SOR. Nor is there a requirement that SOR debts be resolved first. An applicant need only show by his actions his efforts to resolve debts. See, e.g., ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's SOR debts occurred between 2016 and 2018. That is not so long ago. Nor were those debts infrequent. Because of the frequency and recency of the debts, AG ¶ 20(a) does not mitigate his debts.

Most of Applicant's financial problems had their inception between 2016 and 2018, which coincided with a number of unfortunate developments in his personal and professional life. In October 2016, he was laid off. The ensuing unemployment lasted until May 2017. His divorce led to obligations for alimony and child support. Those are conditions "largely beyond [his] control," within the contemplation of AG ¶ 20(b). That does not, however, end the inquiry.

AG ¶ 20(b) requires that Applicant act "responsibly" under the adverse circumstances he confronted. In this case, he retained a credit repair agency. The record shows that the agency was instrumental in resolving SOR ¶¶ 1.b. (a successful dispute). In addition, the agency had Applicant's largest creditor (SOR ¶ 1.d.) reduce the balance due by almost \$10,000 (from \$51,825). The record suggests that Applicant was unable to pay this latter debt, because it had been charged off. The law does not require the doing of futile acts. *Ohio v. Roberts, U.S. 56 (1980)*. I find that AG ¶¶ 20(b) and (e) apply.

The record shows Applicant's pattern of resolving his SOR debts. He paid or settled SOR ¶¶ 1.a., c., and e. Plus, he resolved two unalleged debts. AG ¶ 20(d) applies.

### **The Whole-Person Concept**

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case. I have also considered favorably

that Applicant volunteered two unalleged debts that he resolved. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate 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
Subparagraphs 1.a. – 1.e.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Philip J. Katauskas  
Administrative Judge