



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



In the matter of: )  
)  
) ISCR Case No. 20-00843  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

11/04/2022

---

**Decision**

---

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 19, 2020, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant responded to the SOR, and requested a hearing before an administrative judge. The case was assigned to me on May 10, 2022.

On June 21, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for July 12, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through GE 5 into evidence. Applicant offered Exhibits (AE) A through AE F into evidence. All exhibits were admitted into evidence without objection. Applicant testified. I received the hearing transcript on August 2, 2022. The record remained open until August 8 2022, to give Applicant time to submit additional documentary evidence. Applicant timely submitted additional documents. I marked an email from his personal injury lawyer as AE G. I marked five

exhibits documenting payments as AE H-1 through H-5, and his bank statement printouts as AE I-1 through I-33. All exhibits are admitted into the evidence.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied all of the allegations in SOR ¶ 1 and the allegation in SOR ¶ 2, with explanations.

Applicant is 48 years old and married since 2002. He has two children, ages 9 and 19 years old. He served in the Army on active duty from 1992 to 1998 and received an honorable discharge. He then served in the Army National Guard from 1998 to 2007. He was an E-5 at the time of his honorable discharge. (GE 1) He has held a Secret clearance since 1992. (Tr. 24) He earned a bachelor's degree in 2007. He used his G.I. benefits to attend college. (Tr. 28-29)

Applicant started working for federal contractors in 2008. He has worked for his current employer since 2010. (GE 1) In 2013, he was earning about \$80,000 annually. In 2018 or 2019, he was promoted and transferred to a new location. He anticipates earning about \$100,000 this year. (Tr. 19-24)

### **Financial Considerations**

In about March 2016, Applicant was in a serious automobile accident, involving three cars. His shoulder was injured, which prevented him from working 20 to 30 hours of overtime per pay period. This resulted in a 30% loss of income. He did not return to his previous level of income for about two years. (Tr. 30-33)

Subsequent to this accident, Applicant filed a lawsuit against one of the drivers involved in the accident for the injury to his shoulder. In May 2022, the case was settled for \$20,500; however, the medical bills have not been settled according to his lawyer's July 2022 email. (AE G) Applicant said some of the medical debts in the SOR relate to his accident. (Tr. 38) During a September 2019 interview with an investigator, Applicant said his lawyer had advised him not to pay the medical bills until the case is settled. (GE 2 at 5)

A week prior to his accident, Applicant's wife had a stroke and was hospitalized for a couple weeks. While recovering, she had a heart attack. At the time of her stroke, she had been earning about \$50,000 to \$60,000 annually. Her medical condition prevented her from returning to work and she lost her position. For the first year after his accident and her stroke, both of them spent time in the hospital. She continued to be hospitalized periodically for the next couple of years. (Tr. 39-43) His wife handled their finances prior to her hospitalization. After her stroke, he had to manage the bills and was late paying them at times. (Tr. 39) The loss of her income and reduction in his income had a devastating effect on their finances. (Tr. 43; GE 2 at 6) Applicant's wife finally returned to work three or four months ago.

Prior to his accident, Applicant paid one student loan for \$22,112 in June 2015. (GE 3 at 6) Subsequently, in January 2018, he paid and settled three student loans, which totaled \$23,030. (Tr. 44-45; GE 2 at 4; AE E, AE F)

Based on credit bureau reports (CBRs) from September 2019, February 2020, and June 2022, the SOR alleged 14 delinquent debts totaling about \$41,905, which became delinquent between 2015 and 2019. (GE 3, GE 4, GE 5) The status of each debt is as follows:

1. The alleged student loan in SOR ¶ 1.a for \$19,367 and the student loan in SOR ¶ 1.n for \$17,659 were consolidated. According to the June 2022 CBR, the balance is \$31,174. Applicant made monthly payments of \$144 from August 2020 to June 2022. He continues to make those payments. (Tr. 50, 53; GE 3 at 5; AE D; AE I-1 through I-33) They are being resolved.
2. The \$1,454 credit card debt alleged in SOR ¶ 1.b is a judgment for three credit cards owed to the same creditor. Applicant said he settled the judgment for \$500 and paid it 2015 or 2016. He submitted two credit card statements from August and September 2015, both of which show smaller amounts past due. Since receiving the SOR, he called the creditor, who told him the account is closed. (Tr. 58-60; AE H-3 and H-4) There is insufficient evidence to conclude that it is resolved.
3. The \$389 collection account alleged in SOR ¶ 1.c was paid post-hearing. It was a medical debt from 2015. (AE H-1) It is resolved.
4. The \$213 medical debt alleged in SOR ¶ 1.d is unresolved. Applicant is unsure if this debt was resolved through the lawsuit or is waiting to be resolved. (Tr. 66)
5. The \$166 collection account alleged in SOR ¶ 1.e was paid post-hearing. It was a medical debt from 2015. (AE H-2) It is resolved.
6. Nine SOR alleged medical debts are unresolved: ¶¶ 1.d for \$213; 1.f for \$140; 1.g for \$140; 1.h for \$129; 1.i for \$1,294; 1.j for 561; 1.k for \$108; 1.l for \$72; and 1.m for \$213. They were opened between 2015 and 2017. They total \$2,870 and they were reported as collection accounts in September 2019. Some or all of these debts may be pending resolution through Applicant's personal injury lawsuit. Applicant thinks he may have paid some. (Tr. 68-69; GE at 5; AE G)

Applicant has resolved or is resolving \$37,581 of the \$41,905 alleged debt. Nine medical debts, totaling \$2,870, may be related to his accident, and are yet to be resolved. The \$1,454 credit card debt is not resolved. He stated that if any of these reported debts were found to be his, he would pay them. (Tr. 78)

Applicant submitted his budget. His net monthly income is \$6,868 and includes his wife's income. Their expenses total \$2,585 and payments on debts, including a mortgage and student loans, are \$3,205. They have \$1,079 remaining in their budget at the end of the month. (AE A) He has not participated in credit or budget counseling. (Tr. 75)

## Personal Conduct

The SOR alleged that Applicant deliberately failed to disclose delinquent financial accounts in his August 2019 SCA). He denied that he intentionally failed to disclose that information or attempted to deceive the Government.

During his September 2019 interview, Applicant said he misunderstood the financial questions. He told the investigator that he had recently learned of some student loans with which he was unfamiliar. He was disputing them because he paid them, but they had switched creditors. In his March 2021 Answer to the SOR, Applicant again denied that he intentionally attempted to deceive the Government about his finances. He testified that he believed he had paid his debts and his accounts were current when he submitted his SCA. He said that he also had found debts on his credit report that were not his. (Tr. 71-73; GE 2 at 5)

## **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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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."

Directive ¶ E3.1.14, requires the Government to 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 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 security concern 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.

The guideline lists conditions that could raise security concerns under AG ¶ 19. The following two are potentially applicable in this case:

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

Applicant accumulated delinquent debts and experienced financial problems, beginning in 2015, some of which continue into the present. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The evidence establishes mitigation under AG ¶ 20(a). Applicant's delinquent debts occurred under such circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Those circumstances entailed significant medical problems that both Applicant and his wife encountered in 2016, and were clearly beyond his control. He managed to resolve some student loans in 2015 and 2018. He has been making payments on two other student loans since 2020. His medical debts accumulated between 2015 and 2019, some of which are related to his shoulder injury. In 2018, he paid a student loan, indicating that he was attempting to manage his student loans. Some medical bills may be resolved through his personal injury lawsuit. There is sufficient evidence to establish mitigation under AG ¶ 20(b).

Applicant has not participated in budget or credit counseling, but there is sufficient evidence to show that his financial situation is under control, as demonstrated by his resolution of a large portion of the alleged debt. Applicant paid and resolved the debts alleged in SOR ¶¶ 1.c and 1.e. He is resolving the student loans alleged in SOR ¶¶ 1.a and 1.n through a payment plan. The evidence establishes mitigation under AG ¶ 20(c) and AG ¶ 20(d). According to Applicant's lawyer, there is a reasonable basis for Applicant to delay payment of the nine alleged debts, as they may not be his legal responsibility. The evidence establishes mitigation under AG ¶ 20(e).

Applicant documented that he has made sufficient progress in resolving his debts. He has a valid legal reason for not resolving nine medical debts at this time. He stated that he would pay any outstanding debt that is found to be his responsibility. There is satisfactory assurance that his financial problems are being responsibly resolved. Under all the circumstances, he established sufficient mitigation of financial considerations security concerns.

## **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concerns pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise security concerns and may be disqualifying under the facts alleged in the SOR:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant acknowledged that he did not disclose the delinquent debts alleged in the August 2019 SCA, but denied that he deliberately omitted them with intent to deceive the Government. He was confused by the questions and believed that he had paid or resolved his debts and student loans at the time he completed his SCA. After listening to him testify and observing his demeanor, I find Applicant's explanations credible.

Based on his denials, his confusion about the status of his student loans and medical debts at the time he submitted his 2019 SCA, and his resolution of student loans in 2015 and 2018, the Government failed to prove by substantial evidence that Applicant deliberately concealed information from the Government. He refuted the allegation under this guideline.

### **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;
- (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. Applicant is a 48-year old veteran who honorably served in the Army for 15 or more years and has held a security clearance since then without incident. He has been continuously employed with the same employer since 2010. He gave credible testimony. In 2016, he and his wife simultaneously suffered serious health problems, which led to a significant decrease in their income. In spite of those hardships, Applicant has established a record of responsibly managing debts as demonstrated by his actions. Within the last three months, his wife returned to work, which is improving their finances. There is sufficient evidence to resolve my concerns about Applicant's eligibility for a security clearance. He mitigated the security concerns raised under the financial considerations guideline. He refuted those raised under the personal conduct guideline.

### **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.n:    | For Applicant |
| Paragraph 2, Guideline E: | For Applicant |
| Subparagraph 2.a:         | For Applicant |

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Shari Dam  
Administrative Judge