



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02370
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Michelle P. Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

12/14/2022

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 28, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on February 17, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2022.

The hearing was convened as scheduled on November 16, 2022. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

## Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has a few college credits and numerous technical certifications. He is married for the third time. He and his second wife divorced in 2019. He remarried his first wife in 2019. They are separated. He has three children, ages 19, 18, and 10. (Transcript (Tr.) at 22-24, 63, 66; GE 1, 2)

Applicant owned his own consulting company from 2003 to 2013. He left that practice to work for another company, where he worked from 2013 until a reduction in the workforce in February 2019. He was unemployed until he obtained his current job in about January 2020. (Tr. at 20, 24-27, 71; GE 1, 2)

Applicant's second marriage did not end amicably. He was the primary wage earner in the household. During the separation, he had to maintain two households. Before the marriage ended, his ex-wife used his credit to take out about \$30,000 from various bank, savings, and credit accounts. They were supposed to sell any assets in both of their names. He had a buyer for one of their vehicles, but she refused to sign the sales agreement. The vehicle was repossessed and sold, leaving a deficiency of \$6,792 (SOR ¶ 1.c). Because of all the factors related to his ex-wife, their divorce, and unemployment, he was unable to pay his bills, and a number of debts became delinquent. (Tr. at 19, 23, 52, 56-58, 70-71; Applicant's response to SOR; GE 1-7)

The SOR alleges ten delinquent debts totaling about \$106,000. The debts are established through credit reports and Applicant's admissions.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2020. He reported a number of financial issues, including \$500 in unpaid federal taxes from 2017, child support arrearages, and a foreclosed mortgage. All of these issues were resolved before the SOR was issued and were not alleged in the SOR.<sup>1</sup> He also reported a number of the delinquent debts alleged in the SOR, with the comment, "While going through the divorce, I accumulated a lot of debt trying to sort out living arrangements, bills for multiple homes and legal fees." (GE 1)

Applicant was interviewed for his background investigation in March 2020. He discussed his finances and indicated that his ex-wife "maxed out" their credit cards when they were going through the divorce. He stated that he intended to pay his debts and planned to contact the creditors to set up payment plans. (GE 2)

Applicant responded to the SOR in February 2022. He admitted owing all of the debts and pointed to his ex-wife's actions and his unemployment. He added the same comment for all of the debts:

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<sup>1</sup> Any matter not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing the overall state of Applicant's finances, in the application of mitigating conditions, and in the whole-person analysis.

All of these factors were reasonably outside my control. This item has already been listed as a charge off by the debtor. Therefore, entering into a payment arrangement does not serve to reverse the impact to my credit report nor serve to positively increase my credit standing.

Applicant has not made any payments toward the SOR debts since 2019. He retained a law firm to assist him with his credit. He was advised that the creditors have written off the debts, and they will age off his credit reports, but if he attempts to negotiate with the creditors, it could restart the clock. Since seven years is the standard window for reporting adverse matter, most of his debts will not “age off” the credit report until about 2026. Several debts were disputed and deleted from the credit report for reasons other than that Applicant did not owe them. (Tr. at 20-22, 42-44, 52-55; GE 4-7; Applicant’s response to SOR)

Except for the unpaid SOR debts, Applicant’s finances have improved. His annual salary is \$150,000. He stated that since his credit cannot be repaired by money, he is not vulnerable to coercion, and that in his opinion, the debts should have no bearing on his security clearance. (Tr. at 28, 36, 66)

### **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 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems and delinquent debts. The evidence indicates that it was difficult for him to pay his debts; however, he could pay the smaller debts and start to pay the larger debts at some point, but he chose not to. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

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.

Applicant's financial problems were related to his contentious divorce, the actions of his ex-wife, and unemployment. To receive the benefit of AG ¶ 20(b), he must have acted responsibly under the circumstances. He has not paid any of the SOR debts, not even the \$174 and \$145 debts. He is following the advice of a law firm to wait until the debts age off his credit report. Several debts were disputed and deleted from the credit report for reasons other than that Applicant did not owe them, but most of his debts will not age off the credit report until about 2026. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015).

Applicant argued that he is not subject to coercion or compromise, but that is not the only security concern generated by financial problems. The concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other

qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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.j:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge