



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



In the matter of: )  
)  
) ISCR Case No. 22-00436  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2022

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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 March 31, 2022, 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 April 6, 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 October 25, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an email and nine attached documents that I have marked AE C through L and admitted without objection.

## Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He has worked for his current employer since June 2021. He served on active duty in the U.S. military from 2010 until he was honorably discharged in 2016. He has college credits and training certificates, but he has not earned a degree. He married in 2009 and divorced in 2014. He has a ten-year-old child from the marriage. He lives with his fiancée, and they have a child together. She also has another child that lives with them. (Tr. at 15, 17-22; Applicant's response to SOR; GE 1, 2)

Applicant left the military after his father promised him a job, but that offer never came to fruition. He had periods of unemployment and underemployment. He also admitted that he lived beyond his means. He was unable to pay all of his bills and a number of debts became delinquent. (Tr. at 15-16, 20, 23; Applicant's response to SOR; GE 1, 2; AE A)

The SOR alleges four delinquent debts totaling about \$35,640. Applicant admitted that he owed all of the debts, but he stated that he was paying one of them, and the creditors for the remaining three debts charged off the debts as bad debts and "released [him] from any obligation to pay the debt[s]." The debts include two credit cards, an account that he used to buy a motorcycle, and the deficiency owed on an auto loan after the vehicle was repossessed.

Applicant paid a \$1,607 debt that was not alleged in the SOR in April 2020. He paid a \$570 debt that was not alleged in the SOR in 2020 or early 2021. (Tr. at 34-35; GE 2-6; AE H)

Applicant submitted a Questionnaire for National Security Positions (SF 86) on July 7, 2021. He reported the SOR debts. He stated that with his new job, he would be able to satisfy all of his debts within a few months. He stated that he contacted the creditor for one debt and he had "begun making minimum monthly payments of \$50 [per month] until the debt is resolved." He stated that he also contacted the three remaining creditors, and he was "making minimum \$50 monthly payments" on one debt; and he would start making \$50 and \$100 monthly payments on the last two debts. (GE 1)

Applicant was interviewed for his background investigation on July 30, 2021. He discussed his finances and delinquent debts. He indicated that he made payments on the debts alleged in SOR ¶¶ 1.a and 1.b in 2020 while he was working overseas. He admitted that he had not made any of the payments reported in the SF 86. Credit reports show that as of the date of the SOR, no payments on any of the SOR debts had been received since 2018. (Tr. at 24, 27-28; GE 2-6)

Applicant entered into an agreement with the collection company for the \$9,667 debt alleged in SOR ¶ 1.b on April 6, 2022, the same date he responded to the SOR. He agreed to pay \$62 every week for 156 weeks, through March 2025. He documented that he made all of the weekly payments through October 2022, except one payment in August 2022 was returned for nonsufficient funds (NSF). He paid a total of \$1,735, and

the balance was reduced to \$7,994. (Tr. at 25, 36; Applicant's response to SOR; AE A, B, E, I)

Applicant contracted with a debt-settlement company in October 2022 to assist him in resolving his debts. He enrolled six debts, totaling \$43,359, in the company's debt-resolution program (DRP). The four debts alleged in the SOR, including the debt in SOR ¶ 1.b that he was paying, were included in the DRP. He agreed to make \$320 payments twice a month to an escrow account. The debt-settlement company agreed to negotiate settlements with his creditors and use the accumulated funds in the escrow account, minus their fees, to pay the settlements. The company estimated a payoff amount of \$31,368, with an estimated debt-free date of November 30, 2026. Applicant documented that he made the first two \$320 payments. (Tr. at 24-32, 37; AE F, G)

Applicant's finances have stabilized. His fiancée is self-employed, and they are staying with his fiancée's parents. He has done a lot of studying, and he has adopted the sound advice of experts on managing his finances. He stated that he is committed to maintaining the DRP through its resolution and paying his debts. He has a job offer from the parent company of his current employer for a cleared position, contingent upon him receiving a security clearance. If he is granted a security clearance and gets that job, his finances will improve. He will lose his current job if he does not obtain a security clearance. (Tr. at 30-34, 40-43; AE A, D, J, K)

### **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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had periods of unemployment and underemployment after he left the military because his father promised him a job that never materialized. He also admitted that he lived beyond his means. Applicant's financial problems were partially beyond his control.

Applicant did not pay any of the SOR debts before he received the SOR, but he is credited with paying or settling two smaller debts before it was issued. He entered into an agreement with one creditor to pay \$62 every week for 156 weeks, through March 2025. From April 2022 through October 2022, he paid a total of \$1,735 and reduced the balance owed to \$7,994. He contracted with a debt-settlement company in October 2022 and enrolled the SOR debts in the company's DRP. He agreed to make \$320 payments twice a month. He documented that he made the first two \$320 payments. His finances have stabilized, and he asserted that he is committed to maintaining the DRP through its resolution and paying his debts.

Even with the small amount of payments to the SOR debts, this case could have gone Applicant's way if his payments matched his previous assertions. He wrote in his SF 86 that he had begun making \$50 monthly payments on two debts and that he would

start making \$50 and \$100 monthly payments on the other two debts. He told the background investigator that he made payments on the debts alleged in SOR ¶¶ 1.a and 1.b in 2020 while he was working overseas. None of those statements turned out to be true. What I am left with is Applicant's statement that he intends to pay his debts through the DRP. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

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." 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. The above mitigating conditions, individually or collectively, are insufficient to eliminate concerns about Applicant's finances.

### **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. I also considered Applicant's honorable military service.

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.d:	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