



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



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| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) | ISCR Case No. 22-00868 |

**Appearances**

For Government: Jeffrey Kent, Esq., Department Counsel  
For Applicant: *Pro se*

01/27/2023

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant’s financial issues developed due to circumstances beyond his control. He has acted responsibly to address and resolve his financial delinquencies. His efforts reflect good judgment and reliability, and he has greatly reduced his overall indebtedness. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 10, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In his May 26, 2022 response (Answer), Applicant admitted all of the SOR allegations (¶¶ 1.a through 1.m), and he provided documentation. He requested a hearing

before an administrative judge. The case was assigned to me on August 19, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 1, 2022, setting the hearing for November 16, 2022. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6. Applicant and his witness testified, and he submitted documents I labeled as Applicant Exhibit (AE) A through M. I admitted all proffered exhibits into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. Applicant timely submitted five post-hearing documents, labeled as AE N-R. I admitted the documents into evidence without objection. DOHA received the hearing transcript (Tr.) on November 23, 2022, and the record closed on December 2, 2022.

### **Findings of Fact**

Applicant is 59 years old. In 1982, he enlisted in the U.S. Army National Guard. He received an honorable discharge at the rank of private first class (PFC) in 1991. He earned an associate's degree in 1999. He has never married and does not have any children. From 2010 to February 2016, he was employed as a contract truck driver with another co-driver, his roommate as well as the owner and operator of the truck. They hauled classified cargo for a government contractor. Applicant's DOD security clearance was issued in 2010. (GE 1; Tr. 31-32, 37-38)

The co-driver appeared at the hearing and testified as a witness for Applicant. He stated that beginning in February 2016, Applicant became unexpectedly unemployed after he (co-driver) suffered a serious medical issue and was unable to work for several months. Applicant was unemployed for about eight months, which seriously diminished his finances. After he (co-driver) recovered from his surgery, he moved out of the residence, accepted employment with another company, and no longer needed Applicant's services as a co-driver. This was another unanticipated event since Applicant thought he would resume working with him once he fully recovered. At that point, Applicant decided he would take any employment he could find since his debts were substantial and he no longer had a roommate to split housing expenses. He found employment for minimal pay at a poultry farm. His weekly net pay at the poultry farm was about \$300 a week, and his current weekly net pay as a co-driver is about \$1,000 per week. In May 2018, his former co-driver requested that they work together again hauling classified cargo for their previous government contractor. Applicant accepted his offer. Applicant's annual salary is approximately \$60,000. (GE 1; Tr. 30-34, 46; AE K)

### **Financial**

The SOR alleges 13 delinquent accounts totaling about \$35,000, as follows:

SOR ¶ 1.a alleges that Applicant is indebted to a medical provider for a delinquent account in the approximate amount of \$54. He provided documentation that the debt was paid in May 2022. This debt is resolved. (GE 3; AE B)

SOR ¶ 1.b alleges that Applicant is indebted to a bank for an account referred for collection in the amount of \$479. He provided documentation that the debt was paid in May 2022. This debt is resolved. (GE 3; AE C; Tr. 38-39)

SOR ¶ 1.c alleges that Applicant is indebted to a collection company in the approximate amount of \$627. He provided documentation that the debt was paid in May 2022. This debt is resolved. (GE 3; AE D)

SOR ¶ 1.d alleges that Applicant is indebted to a bank for a department store account referred for collection in the approximately amount of \$627. He testified that he has paid some money to the creditor, but the account has not been paid in full. Applicant contacted the creditor after the hearing, and the representative reported that his account had a zero balance. (GE 3; AE N; Tr. 39-40)

SOR ¶ 1.e alleges that Applicant is indebted to a collection company for a delinquent credit card account in the approximate amount of \$2,572. The November 2022 credit report showed this debt as unresolved. Applicant called the creditor after the hearing, and the representative stated that there were no open or closed accounts under his name. In addition, their policy prevented them from sending verification of that information to the Applicant. (GE 4; AE N; Tr. 39-40)

SOR ¶ 1.f alleges that Applicant is indebted to a collection company for a delinquent credit card account in the approximate amount of \$4,382. The November 2022 credit report showed this debt as unresolved. He intends to pay the remaining balance of this account once his largest debt, alleged in SOR ¶ 1.i, is resolved. (GE 4; AE N; Tr. 39-40)

SOR ¶ 1.g alleges that Applicant is indebted to a collection company for a delinquent credit card account in the approximate amount of \$3,982. The November 2022 credit report showed this debt as unresolved. Applicant called the creditor after the hearing, and reported that he had paid \$5,000 of this debt in June 2020. He intends to pay the remaining balance of this account once his largest debt, alleged in SOR ¶ 1.i, is resolved. (GE 4; AE N, AE Q; Tr. 39-40)

SOR ¶ 1.h alleges that Applicant is indebted to a bank for a delinquent credit card account in the approximate amount of \$1,414. He provided documentation that the debt was paid in May 2022. This debt is resolved. (AE E)

SOR ¶ 1.i alleges that Applicant is indebted to a finance company for a delinquent account in the approximate amount of \$14,197. He provided documentation that he authorized monthly automatic electronic funds transfers from his bank account in the amount of \$1,000 to be paid to the creditor beginning in June 2022. This large debt was for a new heating system he had installed in his home. He has made consistent monthly payments on this account. The November 2022 credit report verified this information by showing the current balance as \$11,280. He provided evidence that he made seven \$1,000 payments to the creditor. This debt is being resolved. (AE A, AE F, AE M; Tr. 32; GE 4)

SOR ¶ 1.j alleges that Applicant is indebted to a bank for a delinquent account in the approximate amount of \$497. The November 2022 credit report reported the debt as unresolved. After the hearing Applicant contacted the creditor. The creditor confirmed that his May 2022 payment was processed and the account balance was zero. This debt is resolved. (GE 4; AE G, AE N, AE R; Tr. 43)

SOR ¶ 1.k alleges that Applicant is indebted to a medical provider for a delinquent account in the approximate amount of \$706. He provided documentation that the debt was paid in May 2022. This debt is resolved. (AE H)

SOR ¶ 1.l alleges that Applicant is indebted to a collection company for an account referred by a cable TV company in the approximate amount of \$552. He provided documentation that the debt was paid in May 2022. This debt is resolved. (AE I)

SOR ¶ 1.m alleges that Applicant is indebted to a collection company for an account referred by a utility company in the approximate amount of \$442. He provided documentation that the debt was paid in May 2022. This debt is resolved. (AE J)

Applicant said he paid \$5,000 in 2020 for the debt alleged in SOR ¶ 1.g, and he paid other outstanding bills that were not alleged in the SOR. He focused on putting his money into a savings account. After he received the SOR in May 2022, he depleted his savings account to pay his delinquent debts. He allowed his savings to accumulate and he maintained contact with his creditors. He stated that “he is working diligently to completely resolve [his] remaining debt.” (AE K; Tr. 43-46)

## **Character Evidence**

Applicant’s witness and co-driver had previously served with Applicant in the U.S. Army National Guard for a brief period of time. He recommended that Applicant’s security clearance be continued since he considered Applicant completely trustworthy. In addition, Applicant submitted a letter of recommendation from the government contractor’s assistant facility security officer. She reported that Applicant had been previously employed from October 2010 to May 2016. In May 2018, he was rehired without reservation. During his career, Applicant has safely transported classified cargo without incident. She considers Applicant to be an exemplary employee. (Tr. 30, 33-34; AE L)

## **Policies**

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. . . .

Conditions that may raise financial considerations security concerns are provided 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.

Based on Applicant's admissions and credit reports in the record, the Government established that Applicant has 13 delinquent accounts totaling about \$35,000. 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 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;
- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017); See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed his financial delinquencies due to unemployment, loss of income from his roommate, and underemployment. Notwithstanding these unforeseen events that impacted his finances, Applicant must demonstrate that he acted responsibly in dealing with his financial issues under the circumstances.

It is well-established that the timing of debt payments is a relevant consideration in evaluating whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. To receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." Directive, Encl. 2, App. A ¶ 20(d). The Appeal Board has consistently held that a "good-faith effort" generally requires that an applicant has

established a meaningful financial track record of payments, to include evidence of actual debt reduction. See, e.g., ISCR Case 05-01920 at 5 (App. Bd. Mar. 1, 2007).

Applicant testified that he had paid other debts not alleged in the SOR, and in 2020, he paid \$5,000 towards the debt alleged in SOR ¶ 1.g. He also put money into his savings, and after receipt of the May 2022 SOR, he depleted his savings account to pay off several of the delinquent accounts. He denied that he only took action to resolve his debts after he was placed on notice that his security clearance was in jeopardy. He has been communicating with his creditors and working diligently to resolve his financial delinquencies well before the SOR was issued. He provided documentation to show he has made seven consecutive \$1,000 monthly payments to his largest SOR creditor for a heating system installed in his home. I find he has established a meaningful financial track record of payments to this creditor. It is his intention to continue working with his creditors until all of his delinquent accounts are paid.

Applicant has fully resolved several delinquent SOR accounts and has greatly reduced his overall indebtedness. There is sufficient evidence that his financial problems are being resolved and are under control. Overall, I find that Applicant has demonstrated that he acted responsibly to address his financial delinquencies. He provided sufficient evidence to mitigate the financial considerations security concerns.

### **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 adjudicative guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's financial issues developed due to circumstances beyond his control. He has acted responsibly to address and resolve his financial delinquencies. His efforts reflect good judgment and reliability, and he has greatly reduced his overall indebtedness.

Despite his financial issues, his employer has seen his work ethic over the years and considers him to be an exemplary employee. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

### **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.m: FOR Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with the interests of national security for Applicant to have a security clearance. Eligibility for access to classified information is granted.

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Pamela C. Benson  
Administrative Judge