



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



In the matter of: )  
)  
) ISCR Case No. 20-03670  
)  
Applicant for Security Clearance )

**Appearances**

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

01/17/2023

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On January 28, 2021, 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 on February 7, 2022 (Answer), and requested a hearing before an administrative judge. Department Counsel amended the SOR on March 2, 2022, by reordering the existing Guideline F allegations and adding four additional Guideline F allegations. The Government also amended the allegation under Guideline E to reflect a change in the information it alleged Applicant intentionally failed to disclose on his September 18, 2019 security clearance application (SCA). Applicant responded to the SOR amendment on March 7, 2022 (Answer to Amendment). The case was assigned to me on September 19, 2022.

The hearing was convened as scheduled on November 16, 2022. I admitted Government Exhibits (GE) 1 through 5 in evidence without objection. Applicant testified, but did not submit documentary evidence. I received the transcript (Tr.) of the hearing on November 23, 2022.

### **Findings of Fact**

Applicant is a 58-year-old employee of a defense contractor for whom he has worked since March 2005. He earned a bachelor's degree in 2012. He was married from 2007 until 2012, resulting in a divorce. He remarried in 2013 and divorced in 2017. In 2018, he remarried his second wife, to whom he is still married. He has three adult children and two adult stepchildren. He served in the U.S. Air Force from 1983 until 2005, when he received an honorable discharge. (Tr. 21-23, 42; GE 1, 5)

Under Guideline F, the Government alleged Applicant's ten delinquent consumer debts totaling about \$39,000 (SOR ¶¶ 1.a through 1.j). Under Guideline E, the Government alleged Applicant's failure to divulge the debts listed in SOR ¶¶ 1.b through 1.j in the SCA despite being required to do so. In both his Answer and Answer to Amendment, Applicant admitted the SOR and Amended SOR allegations with additional comment. While he admitted failing to divulge his delinquent debts on his SCA, he claimed that he did not know about these delinquencies and denied trying to mislead the Government. (SOR; Amended SOR; Answer; Amendment to Answer)

The delinquent credit card for \$2,610 alleged in SOR ¶ 1.a has not been resolved. Applicant does not know what this debt is for and has not investigated it. He has not contacted the creditor or made any payments on this debt since 2016. (Tr. 24-25, Amendment Answer, GE 3, 4)

The delinquent credit card for \$906 alleged in SOR ¶ 1.b has not been resolved. Applicant claimed that he paid this debt in 2018 or 2019, but he provided no documentary evidence to corroborate a payment. The credit reports reflect a last payment date of April 2016. (Tr. 25-26; Amendment Answer, GE 2-5)

The delinquent credit card for \$1,580 alleged in SOR ¶ 1.c has been resolved. Applicant settled this charged-off debt for less than the full balance in about April 2019. This payment is corroborated by the February 2022 credit report. (Tr. 26-28; Amendment Answer; GE 3, 5)

The delinquent credit card for \$1,686 alleged in SOR ¶ 1.d has been resolved. Applicant settled this charged-off debt for less than the full balance in about March 2019. This payment is corroborated by the February 2022 credit report. (Tr. 28-29; Amendment Answer; GE 3, 4, 5)

The delinquent credit card for \$5,648 alleged in SOR ¶ 1.e has not been established. Applicant is listed as an authorized user on this account and is therefore not legally responsible for the balance. (Tr. 29-31; Amendment Answer; GE 2-5)

The delinquent credit card for \$4,230 alleged in SOR ¶ 1.f has not been resolved. Applicant claimed he does not recall opening or using this account. He believed that his wife may have opened this account in his name, but he has not asked her about it because it is a touchy subject. There is no evidence that he contacted the creditor or the credit reporting agencies to dispute or otherwise investigate this debt. He has not made any payments on this debt since 2016. (Tr. 31-32, 34-40; Amendment Answer, GE 2-5)

The delinquent credit card for \$17,498 alleged in SOR ¶ 1.g has not been resolved. Applicant claimed he does not recall opening or using this account. He believed that his wife may have opened this account in his name, but he has not asked her about it because it is a touchy subject. There is no evidence that he contacted the creditor or the credit reporting agencies to dispute or otherwise investigate this debt. He has not made any payments on this debt since 2016. (Tr. 32-40; Amendment Answer, GE 2-5)

The delinquent online account for \$750 alleged in SOR ¶ 1.h has not been resolved. While there is an account with the same creditor listed as a paid collection account on the June 2020 credit report, there is an additional charge-off account with this creditor on the February 2022 and November 2022 credit reports. Given this account's inclusion as a charge off on subsequent credit reports, there is insufficient evidence to show that this account has been paid or otherwise satisfied. Additionally, Applicant testified that has taken no action to resolve this account. He believed that his wife might have opened this account in his name. He has not contacted the creditor, the credit reporting agencies, or asked his wife about this account. (Tr. 36-40; Amendment Answer; GE 2-5)

The delinquent credit card for \$3,886 alleged in SOR ¶ 1.i has not been resolved. Applicant claimed he does not recall opening or using this account. He believed that his wife may have opened this account in his name, but he has not asked her about it because it is a touchy subject. There is no evidence that he contacted the creditor or the credit reporting agencies to dispute or otherwise investigate this debt. He has not made any payments on this debt since 2016. (Tr. 37-40; Amendment Answer; GE 2-5)

The delinquent rental/leasing account for \$512 alleged in SOR ¶ 1.j has been resolved. Applicant settled this charged-off debt for less than the full balance sometime between 2020 and 2022. This payment is corroborated by the February and November 2022 credit reports. (Tr. 40-42; Amendment Answer; GE 2-5)

Applicant claimed that he was not aware of many of these SOR accounts. He claimed that he and his wife had a falling out in about 2016 after they had been living in separate places because of work requirements. He also claimed that many of these accounts became delinquent because his wife thought she was going to be earning more money through a new job that ended up "falling through," and she "did things she probably should not have done credit-wise." She thought they were going to make a lot more money and that is what put them "in that position." His father passed away in August 2022, further delaying his attempt to resolve the SOR debts.

Applicant provided inconsistent evidence with respect to the origination of some of the SOR debts. On one hand, he claimed that his wife opened these accounts in his name, without his knowledge, and that he has confronted her about it. Alternatively, he claimed that he only suspected that she did it, and has not asked her whether she opened these account in his name. I found that his varying explanations about these accounts detracted from his credibility. I also found that he showed a lack of candor while testifying about his finances and his wife's potential fraud. (Tr. 20, 30-31, 34-35, 37-40, 42; GE 5)

Despite telling the security investigator in June 2020 that he was in the process of filling out the paperwork, he has not disputed any of the SOR debts with either the creditor or the credit reporting agencies. He has not filed a police report with respect to any of the SOR debts. He claimed that since 2017, he and his wife have been separating their finances and that they "don't talk finances." He believed that his wife had contacted some of the creditors of the SOR debts that he thinks she opened in his name but he was not sure. Unless noted above, there is no corroborating documentary evidence of any resolution or attempted resolution of the SOR debts. (Tr. 20, 30-31, 34-35, 37-40, 42; GE 5)

Applicant claimed that he budgets his money online through an online banking tool, but he provided no documentary evidence of a monthly budget outlining income and expenses. He claimed that he is responsible for paying for his mortgage and the utilities. He claimed his wife pays the monthly payment for a truck that is in his name because his wife could not qualify for the credit necessary to purchase it. He financed this truck for his wife in 2021 despite telling a security investigator in June 2020 that he would not cosign for her for financing. The purchase price of this truck was about \$41,000 and the monthly payments are \$732. Applicant also recently paid \$17,000 for a camper. The monthly payment on the camper is \$300. He purchased a home in June 2022 for \$369,000. The monthly mortgage payment is \$2,600. He purchased a vehicle in 2021 for \$22,000. His monthly payment on that vehicle is \$450. He has not taken any credit counseling. (Tr. 42-44, 49, 57-60; GE 5)

Applicant claimed he takes home \$7,620 in income from his wages, military service disability, and military retirement. His wife brings home about \$1,100 per week in wages. He has about \$1,500 in his savings account and saves \$1,700 to \$1,800 every month. He could not plausibly account for the discrepancy in his stated monthly savings and his savings account balance. He claimed he has about \$153,000 in his retirement account. (Tr. 51-54, 56-57; GE 5)

Applicant claimed that he did not disclose any financial delinquencies on his SCA because he was either unaware of the accounts that he believed his wife opened in his name without his knowledge, or because he did not understand that he was responsible for debts that were charged off. However, he reviewed a credit report in April 2019 that listed delinquent accounts prior to filling out his SCA. He also admitted that he suspected that he had outstanding financial delinquencies when he filled out the SCA, and that his 2017 separation was partly attributable to financial issues caused by his wife's overspending. Given his admitted suspicion that he had financial delinquencies,

the timing of his review of his credit report, and the implausibility of his explanation of not understanding the consequence of a charged-off debt, he knew about his financial delinquencies when he filled out his SCA. He intentionally omitted that information. He did not volunteer his financial delinquencies before a security investigator confronted him during his June 2020 security interview. There is no evidence of any form of behavioral or marital counseling. (Tr. 20, 44-49; GE 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 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 had consumer financial delinquencies for at least five years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;

(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 settled the debts in SOR ¶¶ 1.c, 1.d, and 1.j through payment prior to the issuance of the SOR. I find in favor of Applicant with respect to those allegations. The allegation contained in SOR ¶ 1.e was not established. I find in Applicant's favor with respect to that allegation.

Applicant has not provided sufficient evidence that the other SOR debts are resolved. His financial issues are ongoing. To the extent that his wife is responsible for his financial issues, the record is unclear as to whether her overspending or fraudulent use of credit has ceased. I therefore cannot find his financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of marital problems. They may have also resulted to some extent from fraud perpetrated by his wife. These conditions were beyond his control. However, to afford himself mitigation under AG ¶ 20(b), he must also show that he acted responsibly under the circumstances with respect to these debts. While he satisfied some of the SOR debts, most of the SOR debts have been unaddressed for years. Despite indicating he would take this step in 2020, he has not disputed debts he claimed are not his with creditors or credit reporting agencies. He has not provided sufficient evidence that he confronted his wife about the possibility that she fraudulently opened and used credit cards in his name. He has not filed a police report. Despite having these unresolved financial delinquencies, he further indebted himself with the purchase of two vehicles, a camper, and a house. AG ¶ 20(b) does not apply.

Applicant settled three of the SOR debts through payment prior to the issuance of the SOR. However, the majority of the SOR debts remain unaddressed. AG ¶ 20(d) partially applies.

Applicant claimed that several of the SOR debts were not his and he believed that his wife might have fraudulently opened credit cards in his name. This claim forms a reasonable basis to dispute the legitimacy of the relevant past-due debts. However, to avail himself of mitigation under AG ¶ 20(e), he must also either provide documented proof to substantiate this fraud or provide evidence of actions to resolve the issue. He provided no documents in this regard. Moreover, he did not dispute any potentially fraudulent debts with creditors or credit reporting agencies. He did not file a police report. He has not provided sufficient evidence that he spoke with his wife about this

issue. He has not provided evidence of actions to resolve the potential fraud with the relevant SOR debts. AG ¶ 20(e) does not apply.

None of the financial considerations mitigating factors is fully applicable. Applicant has not met his burden of establishing mitigation of the financial considerations security concerns.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately omitted derogatory information regarding his finances from his SCA despite being required to divulge it. The evidence is sufficient to raise AG ¶ 16(a).

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(a) the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.



Applicant did not correct the omission of his derogatory financial information before being confronted with the facts. He only acknowledged his financial delinquencies after the security investigator confronted him with them during his 2020 security interview.

Falsification of an SCA is not “minor” because it “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). Given his inconsistent and incredible testimony about his knowledge of his financial delinquencies and the import of a financial charge off, he has not acknowledged his lack of truthfulness when he certified his SCA. He has not undergone counseling or provided evidence of other positive steps to change the behavior. His continued lack of candor about his SCA omission during his testimony leaves me unable to find that this behavior is unlikely to recur. None of the mitigating conditions are applicable and the personal conduct security concerns are not mitigated.

### **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 considered Applicant’s military service, and I have incorporated my comments under Guidelines F and E 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 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.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraphs 1.f-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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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Benjamin R. Dorsey  
Administrative Judge