



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00747
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq, Department Counsel  
For Applicant: Brittany Forester, Esq.

02/13/2023

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial considerations concerns but did not mitigate personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On May 21, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on June 5, 2021 and requested a hearing. This case was assigned to me on August 8, 2022. A hearing was scheduled for December 15, 2022, via Teams Teleconference Services, and was heard on the scheduled date. At the hearing, the Government's case consisted of six exhibits. (GEs 1-6) Applicant relied on two witnesses (his wife and himself) and 12 exhibits. The transcript (Tr.) was received on December 29, 2022.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documentation of a character reference from his spouse. For good cause shown, Applicant was granted 14 calendar days to supplement the record. (Tr. 52) Department Counsel was afforded two days to respond. Applicant did not supplement the record

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated three consumer debts exceeding \$21,000. Allegedly, these debts have not been resolved.

Under Guideline E, Applicant allegedly (a) between 2017 and at least December 2018 communicated and provided monetary assistance in excess of \$15,000 each to two women he met on an online dating website, of whom one was a citizen and resident of the Philippines and (b) falsified his electronic questionnaires for investigations processing (e-QIP) in June 2019, by answering "no" and thereby deliberately failing to disclose that he provided approximately \$17,000 to the Philippines citizen and resident.

In his response to the SOR, Applicant admitted all of the alleged delinquent debts and foreign payments with explanations, while denying any intent to falsify his e-QIP. He claimed he contacted his SOR creditors 1.a and 1.b and made payment arrangements with the creditors to make monthly payments of \$50. He claimed the SOR 1.c debt was charged off due to fraudulent activity and was reported to local law enforcement and copied to the creditor.

Addressing the allegations covered by SOR ¶¶ 2.a-2.b, Applicant denied the allegations and characterized his alleged \$15,000 respective payments (SOR ¶ 2.a) to the two women he met on a dating website as highly questionable. He further claimed that he misunderstood the meaning of providing support to a foreign national when he denied providing financial support to a foreign national in the e-QIP he completed..

### **Findings of Fact**

Applicant is a 55-year-old civilian of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

## **Background**

Applicant married in May 1989 and divorced in April 1993. (GE 1) He has no children from this marriage. (GE 1) He remarried in June 1998 and has no children from this marriage. (GE 1; Tr. 45, 59-60) Applicant has taken vocational and college classes over the course of a number of years (January 2000 to March 2012) without earning a degree or diploma. (GE1; Tr. 16-17) He enlisted in the Army Inactive Reserve in October 1985 and served five years of military service. He received an honorable discharge in February 1990. (GEs 1-2 and AEs F-G; Tr. 19)

Since November 2021, Applicant has been employed by his current employer as a network installer. (GE 1; Tr. 17, 44) Previously, he has worked for other employers (some contemporaneously) in various positions in the engineering and electronics fields. (GE 1) Applicant has previously held a security clearance, both during his military service and civilian employments. (GE 1; Tr. 17-18, 36)

## **Applicant's finances**

Applicant's credit reports documented Applicant's accumulation of three delinquent, charged-off accounts between 2018 and 2021. (GEs 3-6) Applicant's delinquent accounts are reported as follows: SOR ¶¶ 1.a (for \$2,282); 1.b (for \$4,031); and 1.c (for \$15,207). He attributed his debt delinquencies to oversight and fraudulent use of his credit card by a woman he befriended on-line. (GE 2 and AEs B-E; Tr. 20-27))

Applicant has since arranged payment plans with SOR creditors 1.a and 1.b that call for \$50 a month, beginning in June 2021 with SOR creditor 1.a and September 2022 with SOR creditor 1.b. (AEs A-B; Tr. 22-24, 38-40) Addressing his disputed debt with SOR creditor 1.c, Applicant filed a criminal complaint with the attorney general of his state in March 2018, claiming the African woman he met in an online chat room in 2018 asked for financial assistance in exchange for an investment opportunity in an overseas construction company. (GE 2 and AE D Tr. 24-26) Once he saw deposits appear in his SOR creditor 1.c account and then mysteriously removed before his account was linked to three other on-line accounts unknown to him, he contacted his bank (SOR creditor 1.c) and reported unauthorized activity in his account. (AE D; Tr. 36-37)

Responding to Applicant's complaints, his SOR creditor 1.c froze his credit card account and initiated an investigation. (AE D) After completing an internal investigation, SOR creditor 1.c informed Applicant that (a) the overdrawn balance in his creditor card account had increased to \$13,000 and (b) the creditor wanted no further business from Applicant. (AE D) No further results of investigation by either his creditor (SOR creditor 1.c or his state's attorney general's office are available.

Without more information from Applicant, no inferences can be drawn as to the merits of his dispute with SOR creditor 1.c over his unresolved credit card balance with the creditor who (SOR creditor 1.c) thereafter charged off Applicant's \$15,207 credit card debt (exact date unknown) and has not pursued Applicant with any collection actions. (GE 6)

### **Applicant's on-line dating website chats**

Between 2017 and 2018, Applicant communicated and provided monetary assistance to two foreign nationals he met on an online dating website (one from the Philippines and one from Africa). (GE 2 and AEs E and I; Tr. 27-28, 40-41) He attributed his accessing these websites to "intriguing curiosity." (Tr. 45) He has no real hobbies that interest him and has not explored marriage counseling with his wife. (Tr. 48) Asked about the state of his marriage, he considers his marriage relationship to be "strong and solid." (Tr. 48)

Information supplied by Applicant to an investigating agent from the Office of Personnel Management (OPM) confirmed Applicant's transferring over \$2,300 in varying increments to the Philippine national he befriended between October 2017 and May 2018. (GEs 2 and AEs E and I; Tr. 27-28) Each of these women asked for financial assistance, which he provided before breaking off his contacts with both women in 2018 to fulfill his wife's family demands. (Tr. 28).

Applicant assured that he has since timely informed his wife of his contacts and money transfers to the foreign nationals he befriended in online dating web-sites. (Tr. 41, 47) Asked to confirm her understanding of Applicant's communications with the foreign nationals he contacted on the dating websites he accessed, his wife responded that she became aware of Applicant's contacts in 2016, two years before Applicant initiated his contacts with the women. (Tr. 61, 64) Questioned further about when she became aware of Applicant's remitting money to these foreign nationals, she indicated she learned of these money transfers (uncertain of amounts) much later. (Tr. 63) With his wife's uncertainty over the dates and details of his communications with these foreign nationals, assigned weight to his wife's hearing testimony is quite limited.

Applicant confirmed his frequent communications with these two women and the frequent support payments in various amounts he provided them (ranging from weekly to monthly). (GE 2 and AEs E and I; Tr. 31-32) Since breaking off his contacts with the women he met in his online dating website and ceasing his financial support he provided them in 2017 and 2018, he has come to realize his mistakes in helping these women and will never repeat his errors in judgment. (GE 2)

### **Applicant's E-QIP omissions**

Asked to complete an e-QIP in June 2019, Applicant denied ever providing financial assistance to a foreign national. (GE 1) He attributed his omissions to inadvertence and his misunderstanding of the phrase "foreign national." (GE 2 and

Response to SOR; Tr. 30-31) When asked about his repeating his denials of contacts with the two foreign nationals from the Philippines and Africa, respectively, in a PSI conducted in September 2019, Applicant initially confirmed his negative responses in his e-QIP. (GE 2) Confronted with information about the Philippine national he communicated with, he acknowledged his contacting her with varying frequency, between February 2017 and September 2018. (GE 2) Confronted about providing financial support to this Philippine national, he acknowledged both a relationship of friendship and affection with the foreign national and providing financial support to her exceeding \$17,000 (in increments ranging from \$20 to \$900) over a lengthy stretch spanning May 2017 to December 2018 . (GE 2 and AE E)

Confronted with information about his contact with an African national in an online dating site, Applicant acknowledged his contacts with this foreign national over a period of many months spanning July 2017 and July 2018. (GE 2 and AEs E and I; Tr. 31-32) Pressed by the OPM agent about dates and money amounts he provided this African foreign national, Applicant initially expressed a lack of recall before acknowledging his contact visits with this African foreign national in an online dating site over a number of months spanning July 2018 and July 2019.

Queried further by the interviewing OPM agent in his November 2019 PSI, Applicant acknowledged his taking money from this African foreign national and using the money to purchase gift cards in U.S. stores, which he returned to her for use in her business. (GE 2). He admitted to 35 transactions with local stores costing exceeding \$17,000 in U.S. dollars. Records confirm that in May 2018 alone, Applicant received money from the African national exceeding \$3,000. (GE 2)

### **Endorsements and awards and certificates**

Applicant is well-regarded by his supervisors and coworkers, (AE H) They credit him with proven honesty, hard work, trustworthiness, and reliable job. performance. They characterize him as a colleague who is always available to help his coworkers in times of need, and who is person who can be counted on to guard all security information. (AE H) None of his character references, however, expressed any awareness of the financial and personal issues covered in his security clearance application and hearing. (Ae H; Tr. 35) Applicant is credited with earning numerous awards and certificates during his military and civilian service. (AE G) His awards and certificates cover both training completion and appreciation.

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it

is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* Failure or inability 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulation can raise questions about an individual's reliability, and trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes . . . AG ¶ 15.

### **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours.

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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Security concerns are raised over Applicant’s accumulation of three delinquent consumer accounts, exceeding \$21,000, that have not been satisfactorily resolved. Additional security concerns are raised over Applicant’s communicating with and providing financial assistance to two women who are citizens and residents of foreign countries.

#### **Financial concerns**

Applicant’s debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.” Each of these DCs apply to Applicant’s situation.

Applicant’s three admitted debts with explanations and clarifications require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). His admitted debts are fully documented and create judgment issues as well over the management of his finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004). Applicant’s admissions can be weighed along with his explanations and other evidence developed during the hearing.

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

Applicant’s cited delays in addressing his admitted debts (SOR ¶¶ 1.a-1.b) are not attributable to any extenuating hardship conditions that could impair his ability to timely address his debts. Without any material financial setbacks to weaken his finances



over the past five years, few of the potentially available mitigating conditions are available to him.

Two of Applicant's credit card debts (SOR ¶¶ 1.a and 1.b) are currently being addressed through payment plans initiated after the issuance of the SOR in June 2021. Each of these plans calls for monthly payments of \$50 through 2024. For these accounts, mitigating condition (MC) ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," is entitled to partial application. Applicant's disputed account with SOR creditor ¶ 1.c lacks any reasonable basis to dispute the legitimacy of the charged-off debt and is not accompanied by any documented evidence of efforts to resolve the account. Neither MC ¶ 20(e) nor any of the other potentially available mitigating conditions are available to Applicant based on the evidence developed in the record.

In addressing his remaining SOR debt delinquency, Applicant has been less successful. Afforded hearing and post-hearing opportunities to address his disputed but still unresolved SOR ¶ 1.c debt, the debt remains unresolved and outstanding. His disputed account with SOR creditor ¶ 1.c over his claims of fraudulent use of the credit card at issue lacks any reasonable basis to dispute the legitimacy of the charged-off debt and is not accompanied by any documented evidence of efforts to resolve the account. Neither MC ¶ 20(e) nor any of the potentially available other mitigating conditions are available to Applicant based on the evidence developed in the record. Without any more post-hearing documentation of Applicant efforts to resolve this account, this disputed debt cannot be credited as fully resolved.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). Based on the evidence presented, Applicant is not able to demonstrate a sufficient tangible track record of actual debt reduction to satisfy Appeal Board guidance. Payment promises alone that are not accompanied by material good-faith payments still reflect promises to pay that do not meet the good-faith payment requirements of MC 20(d).

### **Personal conduct concerns**

Security concerns are raised over Applicant's communications and monetary assistance to two foreign nationals: one a Philippine citizen and resident and the other from Africa. Over the course of two years between 2017 and 2018, Applicant maintained frequent contact with these women and helped them with over \$17,000 in combined monetary assistance.

Applicable disqualifying conditions are DC ¶ 16(c), "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability,

lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified information,” is applicable to Applicant’s situation. Applicant’s contacts and financial support to these women exposed him to potential compromise of his relationships with his family and colleagues at work

Additional security concerns are raised over Applicant’s concealment of his communications and furnished monetary assistance to the foreign nationals he met on an online dating website. None of Applicant’s e-QIP omissions of his communications with the two foreign nationals he met from the Philippines and Africa were voluntarily corrected by Applicant in his ensuing PSI before he was confronted by the OPM agent who interviewed him months later.

Applicable DCs are ¶¶ 16(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,” and 16(b), “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative,” apply to Applicant’s situation.

Based on the evidence presented, none of the potentially available mitigating conditions apply to the facts of Applicant’s case. Providing materially false information in his e-QIP and ensuing PSI about the past communications and financial assistance he provided two foreign national women over a period of years not only impaired the DoD’s ability to ascertain Applicant’s past and current foreign contacts and relationships, but it revealed serious lapses of candor and judgment by Applicant

### **Whole-person assessment**

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his finances and candor lapses are fully compatible with minimum standards for holding a clearance. Taking into account Applicant’s credited defense contributions and his reconciliation with his wife who he shared his online contacts and monetary remittances with, insufficient evidence has been presented to enable him to mitigate his delinquent and still only partially resolved SOR debts. Applicant’s frequent contacts with foreign nationals, his furnished financial support to these foreign nationals, and his candor lapses when faced with disclosure choices preclude Applicant from meeting the minimum requirements of security clearance eligibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and

circumstances in the context of the whole person. Financial considerations and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:

Guideline F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

Guideline E: (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.b: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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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Roger C. Wesley  
Administrative Judge