



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01777
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/23/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 5, 2020. On September 13, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 21, 2022, and elected a decision by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the

administrative (written) record, in lieu of a hearing. On October 13, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA mailed the FORM to Applicant the next day, and he received it on October 31, 2022. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. No response to the FORM was received.

The case was forwarded to the DOHA hearing office on December 19, 2022, and was assigned to me on January 26, 2023. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Government Items 3 through 6 are admitted into evidence without objection.

### **Findings of Fact**

In his response to the SOR, Applicant admitted SOR ¶¶ 1.b, 1.c, 1.d, 1.h, and 1.k., and he denied SOR ¶¶ 1.a, 1.e, 1.f, 1.g, 1.i, and 1.j, all with brief comments. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 42 years old. He has attended some college but has not earned a degree. He has been employed with a large defense contractor since January 2004, and he has held a clearance since 2015. He and his wife have been married since 2007. He has two children and two stepchildren. (Item 3)

Applicant disclosed several debts on his SCA and he discussed them further in his background interview. (Items 3, 6) His debts are established by credit reports from September 2022 and March 2022. (Items 4, 5)

The SOR details 11 delinquent debts, totaling about \$44,681. Applicant admitted some but denied others, claiming he did not recognize them. (Item 2) They are established by Applicant's admissions and by the credit reports in the record from February 2020, October 2021, and January 2022. (Items 5, 6, 7)

Applicant stated that SOR ¶ 1.f (\$106), a charged-off debt to a financial institution, had been paid after it went to collection. (Item 4)

SOR ¶ 1.g (\$11,941) is the balance owed on a repossessed auto. Applicant asserted that he was not aware of any balance owed after the repossession. (Item 3 at 36) It was initially charged off at \$26,617 but the amount alleged is the balance owed. (Item 4)

SOR ¶ 1.a (\$103) is an insurance bill placed for collection. (Item 4) SOR ¶ 1.b (\$7,838) an account placed for collection by a lender. (Items 4, 5) SOR ¶ 1.c (\$575) an account placed for collection by a phone or internet provider. (Item 4) SOR ¶ 1.d (\$952) an account placed for collection by a bank. (Item 4) SOR ¶ 1.e (\$4,831) is an account charged off by a financial institution. (Item 4) SOR ¶ 1.h (\$1,569) is a gas credit card

account that has been charged off. (Item 4) SOR ¶ 1.i (\$ 2,985) is a department-store credit card account that has been charged off. (Item 4) SOR ¶ 1.j (\$8,193) is an account charged off by a bank. (Item 5) SOR ¶ 1.k (\$5,561) is an account charged off by a credit union. (Item 5)

For the debts he admits, Applicant said that they were incurred when his wife was not working, so he was the sole income in the household. He used credit cards and check-cashing institutions when he was falling behind on his debts. (Items 2, 3, 6) He provided his background interviewer some documentation of payments on non-alleged debts. (Item 6)

For the debts Applicant denied, he said he did not recognize them. (Item 3) He set forth no plan to dispute or address his delinquent debts. He provided no documentation of any payments or any details about any arrangements or agreements to pay his debts, either through the debt relief company or to the individual creditors. He provided no documentation to support his assertions in his background interview that his financial stability has improved. The record did not indicate that he participated in credit counseling through the debt relief company, or otherwise.

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred numerous debts in recent years. The debts are established by the credit reports in the record and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or 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 debts are largely ongoing and unresolved. They continue to cast doubt on his current reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant asserted that many of his delinquent debts occurred when he was the sole income earner in his household, due to the instability of his wife's employment. But However, for full application of AG ¶ 20(b), he must also show that his subsequent actions are reasonable under the circumstances. Applicant provided no details about his efforts to resolve his debts. He did not establish that AG ¶ 20(b) should apply.

For similar reasons, Applicant did not establish that he has undertaken a good-faith effort to resolve his debts, typically by establishing a track record of steady payments towards his creditors (through the debt relief company, or otherwise). He did not establish that AG ¶ 20(d) should apply.

AG ¶ 20(c) does not apply, as Applicant did not show that he has participated in credit counseling or that his debts are being resolved or are under control. As to the debts he denied, Applicant did not provide documentary evidence to support his assertions that he is not responsible for them. AG ¶ 20(e) does not apply.

### **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 the 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(a), 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 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 in my whole-person analysis. Given the limited documentation in this case, Applicant did not provide sufficient evidence to mitigate his delinquent debts, even if they occurred due to a decline in household income. Since Applicant requested a decision on the written record, I did not have the opportunity to question him in a hearing about the status of his SOR debts, to better assess the reasonableness of his actions in addressing them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. This does not mean that at a later date he cannot establish that he is taking reasonable steps to resolve his debts, but at this time, he has not shown that he has done enough to mitigate the financial security concerns arising under due to his delinquent debts.

### **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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.k:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge