



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00882
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:  
*Pro se*

March 16, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 17, 2019. On June 8, 2022, the Department of Defense (DoD) Consolidated Adjudications Facility issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 Adjudicative Guidelines effective within DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on June 26, 2022 and requested a hearing before an administrative judge. Department Counsel was prepared to proceed

on August 26, 2022. The case was assigned to me on September 6, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on November 3, 2022, scheduling the hearing for November 30, 2022. I convened the hearing as scheduled. Department Counsel offered seven exhibits marked as Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered four exhibits marked as Applicant Exhibits (AE) A through D, which were also admitted without objection. Applicant and his wife testified. I kept the record open until January 23, 2023, to give Applicant the opportunity to supplement the record. On December 30, 2022, Applicant submitted eight documents, which I marked as AE E through L and admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 7, 2022. (Tr. at 13-23, 62.)

### **Findings of Fact**

Applicant is 52 years old, married, and has two minor children. He graduated from high school in 1989 and earned an associate's degree in 1992. Since June 2014 he has worked as a technician for a Federal contractor. He was granted a security clearance in about 2012. He is seeking to retain his clearance in relation to his employment. (Tr. at 24-26; GE 1 at Sections 2, 12, 13A, 17, 18, 25.)

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

The Government alleged that Applicant is ineligible for clearance because he is financially overextended with delinquent debts and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR identified 27 charged-off debts or debts in collection owed by Applicant totaling about \$49,000. The Government also alleged that Applicant filed for Chapter 7 bankruptcy in about November 2008 and his debts were discharged in March 2009. In his Answer, Applicant admitted all of the SOR allegations with additional explanations regarding his wife's 2018 diagnosis with cancer and years of medical expenses. The existence and amounts of these debts is also supported by credit reports in the record dated January 29, 2020; November 3, 2021; and May 31, 2022, and Applicant's disclosures in the e-QIP. (GE 3 to 5 and 7.)

The background and current status of each of the debts alleged in the SOR is as follows:

1.a. 2008 Chapter 7 bankruptcy. Applicant and his wife faced financial hardship when she was laid off from her job as a social worker during her pregnancy with their second child. She was bedridden with a high-risk pregnancy, and her employer of 20 years terminated her during the pregnancy. Applicant was also unemployed or underemployed with seasonal jobs for a lengthy period of time. They lost their house to the mortgage lender and their accumulated debts were discharged in bankruptcy. (Tr. at 29-31, 50-51; GE 6 at 35)

1.b Federal Student Loan in collection in the approximate amount of \$23,491. Applicant incurred this debt in connection with his associate's degree. His repayment obligation was deferred for several years before going into collection. He has applied for debt forgiveness under a Federal policy that is presently being addressed in the Supreme Court of the United States. No payments are currently due following the Federal COVID-related "pause" policy on the repayment of student loans. Applicant understands that if the debt-relief program is determined to be legal, most of his student loan debt will be forgiven. Once the litigation is resolved and he knows how much he has to pay, he intends to begin making monthly payments. This debt is not delinquent at this time. I take administrative notice of the fact under Federal student loan policy, Applicant's future payments when they must commence will be based upon an income-driven repayment plan that takes into consideration Applicant's income, family size, and ability to repay the loan at affordable monthly rates. See [www.Studentaid.gov](http://www.Studentaid.gov). (Tr. at 34-38; AE F.)

1.c. through 1.p. Medical debts in collection in the amounts ranging from \$76 to \$5,214, totaling approximately \$14,600. Applicant has medical insurance for himself and his family through his employer. The payments alleged in the SOR are co-pays on each of the bills for medical services for his wife and child. After the hearing, Applicant made a \$3,000 payment that resolved ten of the medical debts in full. He also entered into a payment plan to address the remaining medical debts held by this collection agency. The plan requires payments of \$194.74 per month for 36 months for a total amount of about \$7,000. Applicant's first payment was made in early February 2023. These debts are being resolved. (Tr. at 39-42; AE G.)

1.q. Store credit account in collection for approximately \$1,906. Prior to the hearing, Applicant's wife was in discussions with this creditor to work out a settlement of this debt. After the hearing, Applicant provided a document evidencing his settlement of this debt with a payment of \$953 in full resolution of the debt. The exhibit reflects that the account has a zero balance. This debt is resolved. (Tr. at 42-44, 56-57; AE L.)

1.r. through 1.t Medical debts in collection in amounts of \$1,014; \$1,014; and \$1,108, respectively. See discussion of debts 1.c through 1.p, above.

1.u. Communication service account in collection in the approximate amount of \$458. Applicant's wife believes that this bill relates to services provided to the house they lost in bankruptcy. After the hearing, Applicant provided a document evidencing his settlement of this debt with a payment of \$458 in full resolution of the debt. The exhibit reflects that the account has a zero balance. This debt is resolved. (Tr. at 44-45, 57-58; GE 5 at 16; AE I.)

1.v. Credit-card account in collection in the approximate amount of \$375. After the hearing, Applicant provided a document evidencing his settlement of this debt with a payment of \$197. The exhibit reflects that the account has a zero balance. This debt is resolved. (Tr. at 45, 58-; AE J.)

1.w. Account in collection in the approximate amount of \$334. This debt is for a medical account, according to the Government's January 2020 credit report. Applicant is unaware of this debt or the collection agency. He needs to research this debt further so that he can arrange a settlement. (Tr. at 45, 59; GE 5 at 17.)

1.x. Account in collection in the approximate amount of \$294. Applicant's wife testified that this is a medical debt. The Government's November 2021 credit report reflects that the debt is indeed a medical account and is a "Paid Collection" with a zero balance. This debt is resolved. (Tr. at 45, 59; GE 4 at 5.)

1.y Internet account in collection in the approximate amount of \$258. After the hearing, Applicant submitted a document evidencing his settlement of this debt with a payment of the full amount of the debt. The exhibit reflects that the account has a zero balance. This debt is resolved. (Tr. at 45; GE 5 at 18; AE K.)

1.z. through 1.dd. Medical debts in collection in the amounts of \$160, \$159, \$157, \$156, and \$80, respectively. See discussion of debts 1.c through 1.p, above.

### **Mitigation and Whole-Person Evidence**

Applicant submitted three character-reference letters, one from a long-time friend of Applicant's, a second from a therapist who has known Applicant personally and professionally for over 22 years, and a third from another close friend. All of his references praise Applicant's dedication to his work and his family. They describe him as a trustworthy person with strong religious values and integrity. (AE B through C.)

Applicant loves his job and asserts that he does it well. The income he earns supports his wife and two children. He is determined to repay his debts that arose in 2018 following his wife's cancer diagnosis and treatment, which included surgery, chemotherapy, and radiation. His wife's treatment and medical bills continue up to the present. She is currently in remission, but she gets tested every three months. She still sees the same doctors that make up part of the medical bills listed in the SOR. She was unable to work for a lengthy period and given her present condition is able to only work parttime as a caregiver.

They also had medical bills arising from complications in one of his children's medical condition. The child was born prematurely with medical problems. As a teenager, the child continues to have issues with depression and anxiety, which require ongoing treatment. For the last six or seven years, the child has also been seeing the same doctors that are owed money. Applicant's wife testified that the doctors are willing to work with them on a payment plan for the past-due accounts. She is current on the co-pays owed to the family's doctors. Applicant asserted that he is a man of his word and he intends to fulfill his promises and address all of his debts. (Tr. at 27-28, 31-34, 51-56, 60, 70-71.)

Applicant testified that he and his wife had agreed that they would borrow money from his 401K plan to repay some of the debts and enter into a payment plan on others. That is exactly what Applicant did after the hearing. He and his wife have not received any financial counseling to help them with their planning or their negotiations with their creditors. He testified that they intend to seek financial counseling to help them. His wife testified that they are current on all of their monthly bills. (Tr. at 46-50, 61.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as

to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

As of the date the SOR was issued, Applicant owed approximately \$47,000 for 27 alleged delinquent debts. Applicant’s admissions in his Answer and the credit reports in the record establish the existence of these debts and the application of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by his financial history.

The guideline includes the following three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s financial difficulties:

- (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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The record shows that Applicant has faced unusual circumstances unlikely to recur that arose for reasons largely beyond his control. He went through a bankruptcy in 2008 due to the loss of his employment and his wife's employer of 20 years terminating her due to her disability while experiencing a high-risk pregnancy. At the same time, Applicant was unemployed or underemployed, and the couple was unable to maintain their family home and pay their bills. Ten years later, Applicant's wife was diagnosed with cancer and no longer able to work. Applicant was employed at this time, but as the sole income provider for the family, he was unable to pay all of his wife's numerous medical bills, repay his student loans, and provide housing and the needs of his family of four. In addition, one of Applicant's children, who was born prematurely in 2009, has experienced ongoing medical issues, and Applicant has incurred additional and ongoing medical expenses for the child's care since birth.

Applicant has acted responsibly when faced with the potential loss of his employment and medical insurance for his family. He has borrowed money from his 401K account that he had hoped to protect for his retirement, and he used a portion of those funds to pay several of his debts. Significantly, he made a lump-sum payment of \$3,000 on a number of his delinquent medical accounts and has entered into a payment plan to pay an additional \$7,000 with monthly payments over the next 36 months. Lastly, he has applied for a reduction of his student loan debt that if finally approved by the Supreme Court would largely forgive most of his student loan debt. In the event that the forgiveness plan is not approved by the Court, Applicant will begin repaying his student loans later this year pursuant to an income-driven repayment plan that will keep his monthly payment obligation to a level within his means. Applicant's present financial circumstances and actions do not cast doubt upon his reliability, trustworthiness, or judgment. All of the above-quoted mitigating conditions apply to the facts of this case. Applicant has mitigated the financial considerations security concern.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given significant weight to the extraordinary circumstances that gave rise to Applicant's medical debts, past student loan delinquencies, and bankruptcy. I have also weighed the fact that Applicant's list of debts in the SOR contain very few consumer debts. This is impressive evidence of responsibility in his control of his expenses during financially difficult times. I have also considered the timing of Applicant's remedial steps with respect to settling the medical debts and the small consumer debts. Applicant's reluctance to borrow from his retirement account until it became obvious that it was necessary for him to do so is understandable and represents a conservative approach to his financial planning. The fact that in the end he took that necessary step to address his delinquent debts reflects responsible actions taken to protect his security clearance eligibility and employment. Overall, the record evidence leaves me without questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.dd:

For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON  
Administrative Judge