



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 21-02852
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Kelly Folks, Esquire, Department Counsel

For Applicant:  
*Pro se*

March 23, 2023

---

**Decision**

---

ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on January 8, 2020. (Government Exhibit 1.) On January 14, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on January 29, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 11, 2022. The case was assigned to me on June 7, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 16, 2022. The case was heard on August 15, 2022. DOHA received the transcript (Tr.) of the hearing on August 24, 2022.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibit A, which was also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits B through N, which were also admitted without objection, and the record closed on August 31, 2022.

### **Findings of Fact**

Applicant is 51 years old and married to his fourth wife. She was Applicant's co-habitant at the time he filled out his e-QIP. He has two minor children from his third marriage who live with their mother in the United States. Applicant has been employed by his current defense contractor employer since January 2020 and seeks to retain national security eligibility and a security clearance in connection with his employment. He has been employed by various defense contractors in overseas locations for approximately 24 years. He is currently working at a remote location outside the continental limits of the United States (OCONUS). (Government Exhibit 1 at Sections 13A, 15, and 17; Applicant Exhibit B.)

Applicant was severely injured in a job-related accident in October 2015, according to his e-QIP and May 7, 2020 interview with a Government investigator. (Government Exhibit 1 at Section 13A, Government Exhibit 3.) (Applicant testified that the accident happened in October 2016, but I find the documentary evidence, which is closer in time to the incident, is more accurate as stating the actual date in 2015.) He suffered a traumatic brain injury and severe physical injuries. He spent approximately a year in hospitals and rehabilitation, both for physical therapy and occupational therapy. He was out of work and living on his savings and worker's compensation from the date of the accident until May 2019. Eventually, Applicant received a monetary recovery from his employer in the amount of approximately \$450,000 in damages for his injuries. Applicant put \$350,000 of the recovery into an annuity that provides him with approximately \$1,000 of income very month. (Tr. 17-19, 37-40, 49-50, 57-59.)

Applicant's third wife filed for divorce in August 2017, during his recovery. They were divorced in January 2018. The divorce decree required Applicant to make a large monetary settlement with his ex-wife. Applicant also became responsible for credit card debts that were incurred by his ex-wife in Applicant's name. (Applicant Exhibit F; Tr. 40, 57-58.)

Due to his extended period of unemployment after his accident, Applicant became extremely leery of being caught without cash in case he faced unemployment again. He was also concerned about the effect of the COVID pandemic on his employment at the remote location. Accordingly, Applicant has cash in his bank account. (Applicant Exhibit K.) He stressed that this is almost all of his savings, and he is frugal in using his money to pay off his delinquent debts. Starting in March 2022, when he felt financially stable enough to do so, he began paying the debts one at a time, starting with the smallest and moving his way up. (Tr. 19, 53-54, 67-71, 76-77.)

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

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations under this guideline with explanations.

The SOR alleged that Applicant had ten charged-off or past-due consumer debts in the total amount of approximately \$39,564. Applicant is also alleged to owe back child support of approximately \$4,472. The existence and amount of the debts is supported by credit reports dated February 29, 2020; and May 2, 2022. They are also supported by Applicant's statements to an investigator from the Office of Personnel Management on May 7, 2020; and his responses to interrogatories issued to him by the DoD CAF on August 20, 2021. (Government Exhibits 2, 3, 4, and 5.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed \$23,470 for a collection account with a credit union. This is Applicant's largest debt, and it dates to his third marriage and the period of recovery from his injuries. As stated, Applicant worked at paying off his smaller debts first and working towards the largest ones. Now that all the debts from 1.c to 1.k have been paid or resolved his plan was to begin paying this debt and 1.b after the record closed. (Applicant Exhibit G at 2; Tr. 46-53.) This debt is not resolved, but Applicant has a plan to resolve it.

1.b. Applicant admitted that he owed \$10,262 for a collection account with a credit card company. This is Applicant's second-largest debt, and it dates to his third marriage and the period of recovery from his injuries. Now that all the debts from 1.c to 1.k have been paid or resolved his plan was to begin paying this debt and 1.a after the record closed. (Applicant Exhibit G at 2; Tr. 53.) This debt is not resolved, but Applicant has a plan to resolve it.

1.c. Applicant admitted that he was past-due on his child support obligations in the amount of \$4,472. He supplied documentation showing that he is now current with his child support obligations. The records also show that his child support is automatically

withdrawn from his bank account every month. This debt has been resolved. (Applicant Exhibits C, F, and H; Tr. 59-62.)

1.d. Applicant admitted that he owed a past-due debt to a bank in the amount of \$3,094. He reached a payment arrangement with the creditor and paid the debt off in July 2022, as shown in documentation from the collection agent. (Applicant Exhibit J; Tr. 19, 72.) This debt is resolved.

1.e. Applicant admitted that he owed a past-due debt to a bank in the amount of \$700. He reached a payment arrangement with the creditor and paid the debt off in July 2022, as shown in documentation from the bank. (Applicant Exhibit I; Tr. 19, 72-73.) This debt is resolved.

1.f. Applicant admitted that he owed a past-due debt to a department store in the amount of \$636. Applicant stated in Applicant Exhibit A that he had paid this debt over the telephone and provided a confirmation number from the creditor. Applicant Exhibit H shows a withdrawal from Applicant's bank account in the amount of \$636.08. He stated in Applicant Exhibit L that as of August 30, 2022, he was awaiting a zero-balance letter from the creditor that was to arrive after the record closed. Based on the totality of the evidence, including documentation from Applicant confirming other statements about telephone payments, I find that this debt is resolved. (Tr. 19, 72.)

1.g. Applicant admitted that he owed a past-due debt to a bank in the amount of \$587. He reached a payment arrangement with the creditor and paid the debt off in July 2022, as shown in documentation from the collection agent. (Applicant Exhibit J; Tr. 19, 72.) This debt is resolved.

1.h. Applicant admitted that he owed a past-due debt to a telephone provider in the amount of \$561. Applicant stated in Applicant Exhibit A that he had paid this debt over the telephone and provided a confirmation number from the creditor. Based on the totality of the evidence, including documentation from Applicant confirming other statements about telephone payments, I find that this debt is resolved. (Tr. 19, 72.)

1.i. Applicant admitted that he owed a past-due debt to a telephone provider in the amount of \$101. He reached a payment arrangement with the creditor's collection agent and paid the debt off, as shown in documentation from the collection agent. (Applicant Exhibit N; Tr. 19, 72.) This debt is resolved.

1.j. Applicant admitted that he owed a past-due debt to a medical provider in the amount of \$100. He reached a payment arrangement with the creditor's collection agent and paid the debt off, as shown in documentation from the collection agent. (Applicant Exhibit M; Tr. 19, 72.) This debt is resolved.

1.k. Applicant admitted that he owed a past-due debt to a medical provider in the amount of \$53. He indicated in Applicant Exhibits A and M that the debt had been written

off by the creditor and there was no longer an active account. Based on the state of the record, including Applicant's successful attempts to resolve other debts, I find that this debt is no longer in existence, (Tr. 19, 72.)

Applicant's current financial status is stable. Other than the accounts described above he has no delinquent debt. He is able to pay his current debts without difficulty. Department Counsel indicated concern over an alleged past-due mortgage loan that appeared on Government Exhibit 4. Applicant stated that he was not delinquent on this mortgage and that the property had been deeded to his ex-wife. He provided documentation from the bank stating that Applicant's loan had been paid in full. (Applicant Exhibits D and F; Tr. 63-66.)

### **Mitigation**

Applicant's manager provided two statements on Applicant's behalf. In one he states, "[Applicant] helped create and build a unique position in a remote and challenging OCONUS location and he performs with skill, knowledge and experience and continually contributes to the mission. . . [Applicant] would be exceptionally difficult to replace." He strongly recommends Applicant for a position of trust. (Applicant Exhibits B and E.)

### **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.

Applicant had ten past-due or charged-off debts, and past-due child support, at the time the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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.

Applicant's financial situation occurred because he had several life-changing events in the 2015-to-2017-time frame that affected his financial well-being. He was severely injured in an industrial accident in 2015. Due to the accident, he spent a considerable time in the hospital and in rehabilitation. His third wife filed for divorce in 2017. His period of unemployment, with virtually no income other than workers compensation and a financial recovery, lasted for years. He finally obtained work at an OCONUS location right before the COVID pandemic, which affected his life as well.

Once Applicant reached a point of financial stability, he began to pay his debts, starting with the smallest. Due to his remote location, he had difficulties contacting creditors and obtaining documentation. However, he submitted sufficient documentation to support his written statements and testimony. He has acted responsibly in settling these debts.

In reviewing the available evidence, I find that all of the mitigating conditions cited here apply. Paragraph 1 is found for Applicant.

In support of these findings, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his

financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. (Internal citations and quotation marks omitted.)

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's potential 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his past-due indebtedness. Overall, the record evidence does not create substantial doubt 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.k:

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.

WILFORD H. ROSS  
Administrative Judge