



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00168
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel  
For Applicant: *Pro se*

03/21/2023

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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. Personal conduct security concerns arising from his failure to disclose delinquencies on his security clearance application are mitigated by his voluntary disclosure of the debts in his background interview. Applicant's eligibility for access to classified information is denied.

**Clerical Amendment to ISCR Case Number in SOR**

When this case was processed by the Defense Office of Hearings and Appeals (DOHA), it was assigned as ISCR Case No. 21-00168, and the Statement of Reasons (SOR) was issued under that case number. Due to a clerical error, this case was erroneously entered into the DOHA database as ISCR Case No. 22-00168. Since it is easier to change the case number in the SOR and the Decision than it is to change the case number in the DOHA database, I hereby do so, *sua sponte*, under ¶ E3.1.17 of Department of Defense (DOD) Directive 5220.6, cited in full below. The case number of the SOR is so amended, as reflected above.

## Statement of the Case

Applicant submitted a security clearance application (SCA) on December 22, 2020. On February 11, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The CAF issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive (SEAD) 4 *National Security Adjudicative Guidelines* (AG) effective within DOD on June 8, 2017.

Applicant's initial Answer to the SOR included a typed letter dated February 11, 2022, and a contact sheet, signed and dated February 15, 2022, in which he elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. (Item 2) On February 26, 2022, he submitted a second, more complete Answer to the SOR, in which he "admitted" or "denied" each allegation in the SOR, as required. (Item 2)

On August 26, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. DOHA mailed the FORM to Applicant on September 2, 2022, and he received it on October 19, 2022. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and on November 18, 2022, the case was forwarded to the DOHA hearing office for assignment to an administrative judge for a decision on the written record. The case was assigned to me on January 6, 2023.

The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 8 are admitted into evidence without objection.

## Findings of Fact

In his Answer to the SOR, Applicant admitted the five debts alleged under Guideline F (SOR ¶¶ 1.a through 1.e) but denied the falsification allegation under Guideline E (SOR ¶ 2.a). His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He married his wife in 1999 and they separated in 2013. He references children in his February 2021 background interview, but no details are provided. He has a longtime cohabitant. (Items 3, 5) Applicant served in the U.S. Air Force Reserve from 1996 to 2008 and was discharged honorably. He attended community college while in the Air Force but did not earn a degree. (Item 3)

After leaving the Air Force, Applicant worked for several months in Afghanistan for a large defense contractor (2010-2011). He returned to the U.S. when the contract ended and was then unemployed from July 2011 to November 2012. He then spent five years (2012-2017) as an employee of the transit system for a major U.S. city. He left to relocate to another state. He was again unemployed from November 2017 to March 2019, living off his savings. From March 2019 to September 2020, he worked in the Middle East as a mechanic for a U.S. aerospace company. He was briefly unemployed at the end of 2020 when that contract ended. Since December 2020, he been sponsored for a clearance by a new employer, for a job in aviation. (Item 3) In his February 2021 background interview, he indicated that he had not yet begun working for the company, as the job required transfer to Iraq, and he had only recently received a visa. (Item 5)

In Applicant's undated response to DOD Interrogatories sent to him in July 2021 about his finances, Applicant references an unspecified "health setback" in 2018 from which, he said, he was only then recovering from. (Item 4 at 9). In his Answer, he referenced an unexpected "financial loss" in 2018 but he gave no details. In his background interview, he stated that he tried to start a business as a mechanic and purchased tools in order to do so, but the business never materialized. He took no action on his debts because he believed they had been written off by the creditors. (Item 5)

The SOR debts total just under \$32,500. The record includes credit bureau reports (CBRs) from October 2021 and January 2021 (Items 7, 8), which, along with Applicant's admissions, establish the delinquent accounts alleged in the SOR.

In an interrogatory response to the CAF in July 2021, Applicant was asked about all five of the debts. He said he had recently made arrangements to pay them, and provided phone numbers for the creditors, but no documents about them. (Item 5 at 9)

The debts are detailed as follows. The documents discussed were all provided with Applicant's Answer:

SOR ¶¶ 1.a (\$7,020) and 1.e (\$3,398) are accounts that were both charged off by the same financial services company (accounts #1077 and #1012, respectively).

For SOR ¶ 1.a (#1077), which concerns a pickup truck, he provided a settlement offer from the company for about \$3,510. He provided three checks, apparently from February, March, and April 2022, for \$1,200, \$1,200, and the balance of \$1,109.96. (Answer) This account is resolved.

For SOR ¶ 1.e (#1012), Applicant provided a February 2022 settlement offer from the company noting that the balance (\$1,417) could be settled for a one-time payment of \$283. Applicant settled the debt with a check in February 2022. (Answer Attachments) This account is resolved.

SOR ¶ 1.b (\$6,136) is an account that was charged off by tool company S. Applicant provided an October 2021 letter from the creditor referencing a payment

schedule of \$50 per week to begin in October 2021. The balance owed is not referenced, and there is no indication whether there is a settlement or the full amount owed is to be paid. (Answer attachment) No subsequent documents are included with Applicant's Answer so no payments are documented. This debt is not resolved.

SOR ¶ 1.c (\$1,088) is an account that was placed for collection by a phone company. Applicant provided an October 2021 letter showing payments to be made of \$172 in October 2021 and November 2021, with the balance at \$888. (Answer attachment) He appears to indicate in his Answer that the account has been paid, but this is not documented. The account is not reflected on a February 2022 credit report provided with the Answer. No subsequent documents are included with Applicant's Answer so no payments are documented. This debt is not resolved.

SOR ¶ 1.d (\$14,792) is an account that was charged off by tool company M. Applicant provided a letter from the collection law firm showing a balance of \$20,075 as of February 7, 2022, with one payment of \$200 to be made two weeks later. An earlier letter, dated September 10, 2021, shows a balance at that time of \$20,875. (Answer Attachments) No subsequent documents are included with Applicant's Answer so no payments are documented. This debt was apparently being paid at the time, though the amount owed (about \$20,000) is more than what was alleged. The account is not resolved.

Applicant provided a personal financial statement (PFS) with his July 2021 interrogatory response. He reported net monthly income of just under \$9,800, monthly expenses of \$3,135 and a \$435 monthly car payment. He did not list any payments for his SOR debts. He listed a net remainder of \$3,970. (Item 4)

Applicant did not disclose any of these delinquent debts on his SCA, but he did volunteer in his February 2021 background interview that he had delinquent debts, mostly involving a loan and debts to tool companies. He said he did not have information about his debts available when he prepared his SCA, so he could not list any debts. (Item 5 at 2) He also explained in his Answer that at the time he filled out his SCA, he was recovering from pneumonia and was hospitalized for a week following a mild heart attack. He was not working at the time. He requests consideration to be allowed to continue his employment and earning income for his family. (Item 2)

Applicant did not respond to the Government's FORM, so he did not provide updated documents or other, more recent information regarding any payments towards his debts after February 2022, or any more recent information about his income, expenses, or overall financial stability and ability to address his debts. He did not indicate that he has participated in recent credit counseling or follows a budget (other than his July 2021 PFS).

## 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 financial 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.

The five past-due debts in the SOR are established by Applicant's admissions and by credit reports in the record. AG ¶¶ (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant appears to have incurred his debts when he attempted to start a business as a mechanic. Two of the SOR debts are to tool companies. The business did not materialize, and the debts became past-due, placed for collection, or were charged off. Two of the debts (SOR ¶¶ 1.a and 1.e) are resolved through payments on a settlement offer. The other, larger debts are not resolved. They are ongoing, and if they were resolved that is not established with corroborating documentation from the Applicant. Since the delinquencies are ongoing, they continue to cast doubt on Applicant's current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

The first prong of AG ¶ 20(b) has some application since the debts appear to result from a failed business. However, Applicant did not establish that he has taken reasonable action under the circumstances to address his debts. AG ¶ 20(b) does not fully apply and it does not mitigate the financial security concerns. Similarly, he has not shown under AG ¶ 20(d) that he initiated and is adhering to a good-faith effort to pay or resolve his debts. Applicant has not participated in credit counseling and has not established that his debts are being resolved or are under control. AG ¶ 20(c) does not apply. Applicant did not provide sufficient evidence, particularly documentary evidence, to mitigate security concerns shown by his delinquent debts.

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

AG ¶ 15 expresses the security concern for personal conduct:

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 national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under Guideline E, the Government alleged that Applicant deliberately failed to disclose the five delinquent debts (SOR ¶¶ 1.a-1.e) when he submitted his December 2020 application for a security clearance. (Item 3 at 42) Applicant denied any intent to falsify when he answered the SOR. However, in explaining the circumstances of the debts in his background interview, he explained that several of the debts came after he attempted to start a business as a mechanic but was not able to do so, so he was not able to pay for the equipment. He took no action because the debts were presumably written off. I conclude that Applicant knew enough about the debts that he should have listed them on his SCA. I find that AG ¶ 16(a) applies.

However, I also conclude that Applicant volunteered information about his debts when he had his background interview, in February 2021, and he did so before he was confronted about them. The following mitigating condition under AG ¶ 17 therefore applies:

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

### **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 Guidelines F and E in my whole-person analysis.

Applicant did not provide sufficient evidence to mitigate his delinquent debts, even if they were incurred due to a failed attempt to start a business. He needs to establish that he has addressed, or is addressing, his past-due debts in a responsible way, through evidence of a track record of steady payments and financial stability. Since Applicant did not request a hearing, I had no opportunity to question him about his debts, or to assess the reasonableness of his actions to address them. He also provided no updated information about his debts after answering the SOR. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For these reasons, I conclude that while personal conduct security concerns are mitigated, the financial considerations security concerns are not mitigated.

### **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
Subparagraph 1.a:	For Applicant



Subparagraphs 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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