



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 22-00012
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esq. Department Counsel  
For Applicant: *Pro Se*

03/30/2023

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**Decision**

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KATAUSKAS Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations. Eligibility is denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on August 31, 2020, in connection with his employment by a defense contractor. On February 11, 2022, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

On February 14, 2022, Applicant submitted an answer to the SOR (Answer) in which he requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On July 29, 2020, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 11. On that same date, the FORM was mailed to Applicant. Applicant received the FORM on August 16, 2022. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted no response. Government Items 1 and 2, the SOR and the Answer, respectively, are the pleadings in the case. Items 3 through 11 are admitted without objection. The case was assigned to me on November 17, 2022.

### **Findings of Fact**

After a thorough and careful review of the pleadings, the Government's exhibits, and Applicant's Response, I make the following findings of fact.

Applicant is 50 years old and has been married since June 2009. He has no children of his own but has two adult stepchildren. He is a high school graduate. Since November 2018, he has been employed by a defense contractor. (Item 5.)

Under Guideline F, the SOR alleged that Applicant: (1) filed Chapter 13 Bankruptcy in December 1993, which was converted to Chapter 7 and discharged in January 1997; (2) filed Chapter 7 Bankruptcy in 1999, which was discharged in March 2000; and (3) filed a Chapter 13 Bankruptcy in August 2018, which remains open. (Item 1.) Applicant admitted those allegations with the following quoted explanations.

SOR ¶ 1.a. During this time [January 1997] I was working in [a hospital] where I slipped on wet floor and no sign was indicated floor being wet. Workers compensation took about 1.5 years to release any payment to me which I had to hire an attorney. During this time my bills were all behind and I had no financial support from family and friends. I had surgery on left knee because of the injury I sustained.

SOR ¶ 1.b. During this time [March 2000] I was working at . . . Correctional Center where a co-worker crushed my hand on a 1500 lb door because she accidentally pushed wrong button. My right hand was crushed where I had 9 surgeries, 2 plates and 14 screws within 5 years. Workers compensation in the beginning was paying me but then payments stopped for more than 10 months. My attorney was able to get my payments reinstated and I was medically retired.

SOR ¶ 1.c. Prior to this time [August 2018], my wife was working 60 hours a week. She started to have a lot of pain to where she could barely get out of bed. We saw numerous doctors and out-of-pocket expense was a lot. Multiple dr. visits during the week would average to \$500 a week and

that wasn't including cost for injections, mris or ct scans [and] prescription cost was extremely high as well. My wife has had 2 surgeries during this time frame and the outcome was not great. She had to quit her job and apply for disability. We had no other option but to file for Chapter 13 to where we can still keep what we have and continue to pay on it. (Item 2.)

For about a decade, Applicant worked as a contractor for federal and international employers. When he returned from some of those deployments, he experienced periods of unemployment. During a period of unemployment in 2018, he was also caring for his wife in their home state and for his father, who lived out of state. They both had medical problems. (Items 5 and 6.)

Applicant began experiencing financial problems not long before 1993, which lead to his first bankruptcy filing, a Chapter 13 in December of that year. Even though the plan was amended in February 1994 not long after it was filed, he failed to make his plan payments. Therefore, it was converted to a Chapter 7 and discharged in January 1997. But his financial problems persisted, and he filed for Chapter 7 in December 1999 which was discharged in March 2000. (Items 7 and 8.)

Thereafter, Applicant seemed to be on an even keel financially, but in early 2011 his financial issues resurfaced. His May and December 2015 SCAs identified delinquent accounts. (Items 3 and 4.) Several other accounts went into default in 2017 and 2018. (Item 6.) He attributed those delinquencies to his wife's medical conditions and two surgeries. Her surgical outcomes were "not great." She had to quit her job and apply for disability. Applicant dipped into retirement funds to attempt to defray some of the medical expenses and make up for his wife's lost income. (Items 2, 5, and 6.)

Notwithstanding Applicant's efforts, he filed for Chapter 13 bankruptcy protection in August 2018. His filings showed three motor vehicles, two repossessions, and multiple credit cards. The filings also showed \$27,500 in unsecured debt. He estimated he and his wife made a total gross monthly income of \$5,500 with a net remainder of \$950. (Items 6 and 9.)

It has been difficult for Applicant to adhere to his plan payments. In October 2018, numerous objections were file that caused an Amended Plan to be issued in November 2018. Between January 2019 and June 2022, there were eight motions to dismiss filed for nonpayment. The plan has been modified on numerous occasions, because he could not afford to make plan payments. (Item 9.) In July 2022, the monthly plan payment was set at \$1,412. But when he failed to make regular payments, a new monthly payment was set at \$1,507. Department Counsel observed that this amount is significantly beyond the budgeted \$950 monthly net remainder. (Item 9.) Even though confronting obstacles to make plan payments, he opened new credit cards and took out a vehicle loan for \$15,763. (Item 11.) In his Personal Subject Interview, he offered that he has not used any debt consolidation or credit counselling services. (Item 6.)

## **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, “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).

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available and 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 national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

### **Guideline F Financial – Considerations**

The security concern relating to Guideline F for financial considerations is set out 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. 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.

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).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

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

The SOR debts are established by Applicant's admissions, his bankruptcy filings, and the Government's credit reports. AG ¶¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F 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,...), 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.

I have considered mitigating condition AG ¶ 20(a). Applicant's SOR depicts a long history of his financial woes that began in 1993 or before. That was, of course, 30 years ago. But in 1999 and as recently as 2018, he was compelled to seek bankruptcy protection yet again. Not only are the circumstances likely to recur, they have, in fact, recurred. His latest Chapter 13 is still open, and he has had trouble making plan payments in that proceeding. The admitted SOR allegations are not mitigated by AG ¶ 20(a).

I have also considered mitigating conditions AG ¶ 20(b) and (d). AG ¶ 20(b) has two requirements. First, an applicant's financial problems must have been the result of conditions "largely beyond" his control. Second, an applicant must have acted "responsibly" under the adverse conditions he confronted.

In this case, Applicant years ago faced overseas deployments that often left him unemployed upon his return. In one such instance, in 2018, he returned to find that his wife needed his care for a medical condition, while his father, who lived out of state, also had medical needs that required his attention. Add to these problems

the difficulties Applicant described in his Answer, and it is clear he faced conditions “largely beyond” his control. The first test under AG ¶ 20(b) is satisfied. That does not, however, end the inquiry.

AG ¶ 20(b) also requires an applicant to act "responsibly" under the adverse circumstances he confronted. Here, Applicant stated that his current circumstances gave him “no option” but to file for Chapter 13 bankruptcy protection. There are financial conditions where Chapter 13 is prudent and responsible conduct. This may be such a financial situation. But a Chapter 13 filing itself imposes certain responsibilities, chief of which is to adhere to making plan payments. Applicant has not regularly made such payments, and the prognosis is not promising. And his recently opened lines of credit show questionable conduct. The admitted SOR allegations are not mitigated by AG ¶ 20(b).

Under AG ¶20(d), Applicant can be given credit for initiating a Chapter 13 as a means of being protected from creditors but also as a way of making them partially whole, That would, however, require that he adhere to the plan’s payment schedule. He has not done so. The admitted SOR allegations are not mitigated by AG ¶ 20(d).

### **Whole-Person Concept**

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

### **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. c:	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 access to classified information. Eligibility for access to classified information is denied.

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Philip J. Katauskas  
Administrative Judge