



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00236
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

04/06/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 18, 2021, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective on June 8, 2017.

On January 14, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

January 9, 2023, scheduling the hearing for February 7, 2023. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant had no objections, and the documents were admitted in evidence. Applicant and two witnesses testified on his behalf. He did not offer any documents. The record was held open until February 28, 2023, to permit Applicant an opportunity to provide documentary evidence. He submitted documents that were marked AE A through R. AE C and D were intentionally left blank so the letters on the exhibits would correspond to the allegations in the SOR. Applicant provided comments regarding these allegations in AE R, which is a summary of his actions. There were no objections to the exhibits, they were admitted into evidence, and the record closed. DOHA received the hearing transcript (Tr.) on February 16, 2023.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b through 1.d, and 1.h. He denied the allegations in SOR ¶¶ 1.a, 1.e through 1.g, and 1.i through 1.p. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He is a high school graduate, and he has earned some college credits, but not a degree. He served in the military on active duty from 2010 to 2015 and received an honorable discharge. He married in 2014 and has a five-year-old child. He also has custody of a 16-year-old child from a previous relationship. Applicant worked for different federal contractors and non-federal contractors since his discharge from the military. He disclosed a one-month period of unemployment. He has worked for his present employer, a federal contractor, since October 2018. (Tr. 14-18; GE 1)

In 2015, as part of his employment with a federal contractor, Applicant worked in a foreign country. In September 2016, he and his wife purchased a house in the United States while he was working overseas, and they relocated to a different state. They believed they could cover their expenses. When he returned from his overseas employment in February 2017, he experienced a substantial reduction in pay. His wife had been working full time, but then lost her teaching job in June 2022. She is seeking new employment. Applicant is hoping she can find a new job, which will substantially help resolve some of their financial issues. They have also reduced their spending. Applicant testified that he attempted to obtain a loan to help pay some debts but was unable. (Tr. 18-24, 50-53,57-58)

The SOR alleges 16 delinquent debts totaling approximately \$66,741. The debts are corroborated by Applicant's admissions in his answer, admissions during his April and May 2020 background interview with a government investigator, and credit reports from April 2020, January 2021, and February 2022. (GE 1-5)

Applicant disputes the debt in SOR ¶ 1.a (past due \$642) for a timeshare. Applicant is disputing this debt because the property was sold, and he disagrees with the final

accounting believing the sale satisfied the debt. He disputed it on his credit report and provided a copy of it showing his dispute. A report of resolution had not yet been completed. (Tr. 41-44; AE A)

Applicant also disputes the debt in SOR ¶ 1.p owed for an insurance policy that he canceled when the insurer raised his premiums. Applicant believed he was entitled to a prorated bill and was instead charged for the entire premium. He disputed the charge on his credit report and provided a copy of it showing his dispute. A report of resolution had not yet been completed. (Tr. 33-34; AE P)

Applicant provided documentary evidence to show the debts in SOR ¶¶ 1.b, 1.e through 1.g, and 1.i - 1.o are paid, settled, or resolved. Some were resolved in 2021 and others in early 2022. Applicant has a payment plan for the debt in SOR ¶ 1.h (\$2,880) to make \$100 monthly payments until the debt is resolved. He began making payments in 2022. His documents reflect the amount to be paid in settlement is \$2,380. He testified that SOR ¶¶ 1.f and 1.h are duplicate debts. Both are resolved in his favor. (Tr. 25-35, 40, 44-49; AE B, E-P)

The charged-off debt in SOR ¶ 1.c (\$36,165) is for a car loan and the debt in ¶ 1.d (\$5,957) is a credit card debt. Applicant explained that the car stopped working and he fell behind on the payments. He got behind on the credit card when he returned from overseas and could not keep up with the payments. He contacted the original creditor in SOR ¶ 1.c and attempted to pay a \$5,000 lump sum he had received as a bonus to them, but the creditor would not accept the payment. The creditor advised him it would only accept a lump-sum payment for the entire amount to resolve the debt. Applicant was unable to pay the full amount. (Tr. 36-39, 44; AE R)

Applicant testified he had a payment plan with the creditor in SOR ¶ 1.d. However, in his post-hearing submission, he indicated that he was unable to pay the amount owed on the debt and could not make payment arrangements at the time. He recently contacted the collection companies for both SOR ¶¶ 1.c and 1.d and they offered to establish payment agreements, but he had to pay a percentage of the total owed before a payment plan would be established. Applicant has been paying other debts and is unable to make the percentage payments currently. He intends to continue resolving other debts and then when they are paid, he will contact the collectors for these accounts and establish payment plans to resolve them. (Tr. 40-45; AE R)

Applicant participated in financial counseling in 2021. He has not opened any new accounts and has no new delinquent accounts. He has a written budget that he follows. He is committed to paying the remaining delinquent debts. (Tr. 56-57)

Applicant's mother and sister testified on his behalf. They described Applicant as responsible, dependable, and a dedicated father, son and brother. He is a person devoted to his faith, honest, loyal, reliable and a leader. They have witnessed the values he has instilled in his children. (Tr. 61-71)

## Policies

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

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 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. 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F: Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had numerous delinquent debts that he was unable to pay when he returned from an overseas contractor job and his income was reduced. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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 still has some delinquent debts that he is paying and others he has not resolved, so they remain current and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his reduced income when he returned from overseas. This was not beyond his control. He should have been aware that his salary would be reduced on his return and established a plan to manage his finances with the reduction in income. However, he has shown sufficient evidence that he has addressed many of the delinquent debts that he accumulated, but not all. The evidence supports he has acted responsibly by reducing his spending and paying some creditors. AG ¶ 20(b) partially applies.

Applicant testified that he received financial counseling. He also provided documentary proof that the debts in SOR ¶¶ 1.b and 1.e through 1.o were paid, being paid, or settled and resolved. He has a payment plan for the debt in SOR ¶ 1.h. There are clear indications that Applicant's financial problems are being resolved and are under control, and he has made good-faith efforts to repay overdue creditors. AG ¶¶ 20 (c) and 20(d) apply.

Applicant is disputing the debts in SOR ¶¶ 1.a and 1.p and he provided a copy of his dispute with the credit bureau. Although the disputes have yet to be resolved, I find he has a reasonable basis for his disputes, and he provided proof he is actively pursuing them. AG ¶ 20(e) applies.

Applicant has two large debts that are not paid (SOR ¶¶ 1.c and 1.d). He credibly testified that he intends to repay these debts once he has sufficient funds to pay the amount the collection companies require to start a payment plan. I believe Applicant understands that his failure to follow through on this promise could potentially result in negatively affecting his ability to retain a security clearance. He has a repayment plan that he also must complete. He is hopeful his wife will soon be employed, which will improve his finances. Applicant's finances are not perfect, but he has not ignored his obligations. He has made sufficient progress in resolving and addressing the debts in the SOR, which reflects positively that he will continue to act responsibly. He has mitigated the financial considerations security concerns.

### **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(c), 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.

Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated 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:                      FOR APPLICANT

Subparagraphs 1.a-1.p:                      For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge