



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



In the matter of:	)	
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	)	ISCR Case No. 21-02504
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
*Pro se*

April 13, 2023

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his initial Electronic Questionnaires for Investigations Processing (e-QIP) on July 27, 2020. (Government Exhibit 1.) On May 5, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 May 12, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 6, 2022. The case was assigned to me on July 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 4, 2022. The case was heard on September 1, 2022. DOHA received the transcript of the hearing on September 12, 2022.

The Government offered Government Exhibits 1 through 9, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through E, which were also admitted without objection, and the record closed.

### **Findings of Fact**

Applicant is 30 years old and married with two children. He has an associate degree. Applicant is employed by a defense contractor and seeks to obtain national security eligibility and a security clearance in connection with his employment. This is his first application for national security eligibility. (Government Exhibit 1 at Sections 12, 13A, and 17.)

#### **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.

The SOR alleged that Applicant has seven debts that were charged-off, or in collection, in the total amount of approximately \$54,468. (SOR 1.a through 1.g.) The existence and amount of these debts is supported by his admissions to all SOR allegations in his Answer. The debts are also confirmed by credit reports submitted by the Government dated August 18, 2020; March 30, 2021; and July 6, 2022. (Government Exhibits 7, 8, and 9.) The existence of the debts is also supported by Applicant's answers on Section 26 of his e-QIP (Government Exhibit 1) and during an interview with an investigator from the Office of Personnel Management on August 28, 2020. (Government Exhibit 2.)

Applicant stated that he was unable to pay these debts, most of which date to the 2016/2017-time frame, "due to unstable jobs and also being a full-time student and helping my mother who fell ill in 2019." Applicant admitted he made a conscious decision to not pay these debts in order to take care of his mother and his family. (Government Exhibit 1 at Section 26; Applicant Exhibit D; Tr. 52-53.)

The current status of the debts is as follows:

1.a. Applicant admitted owing \$22,481 for a motorcycle that he surrendered to the lender shortly before the hearing. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 36-38.) This debt is not resolved.

1.b. Applicant admitted owing \$14,365 for an automobile loan that was charged off. The vehicle was involved in a one-car accident and was totaled. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 38-40.) This debt is not resolved.

1.c. Applicant admitted owing \$7,850 for a water purification system that was installed in a house Applicant owns, which is occupied by his in-laws. The in-laws agreed to pay for the system but failed to do so and Applicant is responsible for the debt. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 40-42.) This debt is not resolved.

1.d. Applicant admitted owing \$5,474 for an automobile loan that was charged off. This vehicle was also involved in a one-car accident and was totaled. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 42-43.) This debt is not resolved.

1.e. Applicant admitted owing \$2,344 to a furniture company for a charged-off debt. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 43-45.) This debt is not resolved.

1.f. Applicant admitted owing a charged-off credit card debt in the amount of \$1,263. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 45.) This debt is not resolved.

1.g. Applicant admitted owing a cable company a past-due debt in the amount of \$691 for equipment that was not turned in. Applicant has not made any recent payments on this debt and has no current plans to make any payments on this debt. (Tr. 45-47.) This debt is not resolved.

Applicant testified that his current financial situation is stable. He is able to pay his normal monthly expenses. Applicant realized his finances can affect his security worthiness but has not yet taken the initiative to determine how he can reduce or pay off his past-due indebtedness. (Tr. 52-55.)

## **Paragraph 2 (Guideline E, Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that involves questionable judgment, unreliability, dishonesty, or unwillingness to comply with rules or regulations. Applicant admitted allegations 2.a, 2.d, 2.e, and 2.f under this paragraph. He denied allegations 2.b and 2.c.

2.a. Applicant admitted he left Company A's employment in May 2019. He was working for a temporary personnel company (TPC) at that time, not for Company A. Applicant stated he had to miss a shift because he did not have a babysitter for his child and had to stay home. The TPC called Applicant and told him his services were no longer required. There is no allegation of misconduct, or evidence that Applicant is ineligible for rehire, in the record. (Government Exhibit 1 at Section 13A; Government Exhibit 2 at 2; Government Exhibit 4; Tr. 22-23.)

2.b. Applicant denied that he was fired from Company B in about April 2019 for not being in camera view for 30 minutes at his assigned security guard post. He stated that he was talking to his lead during this period of time. Shortly after talking to his lead he was told to go home. The TPC that he actually worked for called and told him his services were no longer required. There is no allegation of misconduct, or evidence that Applicant is ineligible for rehire, in the record. (Government Exhibit 1 at Section 13A; Government Exhibit 2 at 3; Tr. 23-25.)

2.c. Applicant denied that he was fired from employment with Company C in about July 2018 due to his alleged involvement in an attempted robbery.

Applicant's employer at that time accused Applicant in a written statement to the Office of Personnel Management of participating in an attempted robbery at his place of employment. The employer stated that there was video evidence of Applicant's conduct on the night in question, but the police "were not able to gather enough evidence to charge [Applicant]." (Government Exhibit 3.)

Applicant denied involvement in any attempted robbery. He did admit not properly locking a door, and that allowed a person to enter the establishment and engage in a fight with Applicant's employer. (Tr. 25-29.)

Applicant submitted a letter from a person who knows both Applicant and his employer at Company C. She worked with the employer in the past as his accountant. The letter reads in part, "I can state with first-hand knowledge that [employer] has perjured himself in his letter [Government Exhibit 3] to you regarding [Applicant]." After giving a totally different version of the events in question that closely matches Applicant's testimony she stated, "[Employer] suffers from untreated mental disorders and should not be utilized as a resource for a personal or professional reference. His reference letter regarding [Applicant] is pure nonsense." (Applicant Exhibit B.)

Applicant also submitted an email from a detective of the police department that investigated the alleged crime. The detective's email stated, "In reviewing the robbery investigation from July 2018, [Applicant] is a witness to the crime and not a suspect." (Applicant Exhibit E.)

2.d. Applicant admitted that he was charged in March 2017 for state Vehicle Code violations including Driving on a Suspended or Revoked Driver's License, Driving in Excess of 100 Miles per Hour, and not complying with Child Safety Belt Requirements. He entered a plea of Nolo Contendere for the first two offenses, was found guilty, and sentenced to 36 months summary probation and a fine. Applicant served two days in jail in lieu of the fine. (Government Exhibit 1 at Section 22; Government Exhibit 2 at 5; Government Exhibit 5 at 1-3; Government Exhibit 6; Tr. 29-30.)

2.e. Applicant admitted that he was charged in May 2017 for state Vehicle Code violations including Driving on a Suspended or Revoked Driver's License and Driving in Excess of 65 Miles per Hour. He entered a plea of Nolo Contendere for the first offense, was found guilty, and sentenced to 36 months summary probation and a fine. Applicant served two days in jail in lieu of the fine. (Government Exhibit 1 at Section 22; Government Exhibit 2 at 5; Government Exhibit 5 at 4-6; Government Exhibit 6; Tr. 30-31.)

2.f. Applicant admitted that he was charged in September 2017 for state Vehicle Code violations including Driving on a Suspended or Revoked Driver's License and Driving in Excess of 65 Miles per Hour. He entered a plea of Nolo Contendere for the first offense, was found guilty, and sentenced to 36 months summary probation and a fine. Applicant served five days in jail in lieu of the fine. (Government Exhibit 1 at Section 22; Government Exhibit 2 at 5-6; Government Exhibit 5 at 7-9; Government Exhibit 6; Tr. 31-32.)

Applicant stated that after the incident in allegation 2.f he changed his driving habits. He testified, "I needed to start being a better person for my kids and stop driving like a maniac." He has completed all his probation requirements, has a current driver's license, and has had no subsequent incidents. (Tr. 31-34.)

## **Mitigation**

Applicant has progressed far in the last several years. At the time of most of these incidents he was working as a security guard or had other temporary employment. He did not have a high school diploma. He received his GED in 2018 and immediately began attending a local college. He obtained an associate of science degree in December 2020 and is still attending school to obtain his bachelor's degree. (Applicant Exhibit A; Tr. 21-22.)

Applicant Exhibit B includes a recommendation for Applicant as well as information on allegation 2.c. The letter writer stated, "I have known [Applicant] for over 10 years and

I know that his work ethic and determination would be an asset to any organization that employs him. I have seen him go on to seek a higher education while providing for his family with the utmost determination.”

## **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 personal 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 has seven debts that were charged-off, or in collection, in the total amount of approximately \$54,468. Each of these debts involved contracts for discretionary consumer purchases. He has not made any recent payments on these debts, and has no current plans to make payments on these debts. 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 has not mitigated the security significance of his past-due indebtedness. These debts have been in existence for many years, and Applicant admitted making a conscious decision not to pay them so he can take care of his mother. While laudatory, there is little to no evidence that Applicant has behaved responsibly under the circumstances, as required by AG ¶ 20(b). Applicant is fully aware of the impact delinquent debt can have on his security clearance eligibility, but has not yet begun the work to resolve the issue. None of the mitigating conditions are applicable to Applicant's situation. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E, Personal Conduct)**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 two conditions that could raise security concerns and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,



supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy, or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant was let go from two temporary employments without allegations of misconduct in 2019. He was accused by another employer of being involved in an attempted robbery in 2018. He also was cited three times in a period of seven months in 2017 with serious state Vehicle Code violations. The above disqualifying conditions have application to this case.

The guideline includes three conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's conduct:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant has mitigated the security significance of the incidents alleged in Paragraph 2. With regard to allegations 2.a and 2.b, there is no evidence that Applicant engaged in work-related misconduct sufficient to raise any concerns under the disqualifying conditions. Allegation 2.c was serious, but the statement by the police officer

(Applicant Exhibit E), as supported by Applicant's own testimony and the statements in Applicant Exhibit B, strongly support application of mitigating condition AG ¶ 17(f). Finally, Applicant has admitted that he drove in a reckless manner in 2017, but he has changed his behavior and has changed his driving habits for the better. Accordingly, paragraph 2 of the SOR is found for Applicant.

### **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 is a young man of tremendous potential. Since he decided to better himself, he has worked hard on his education. This has allowed him to get a better job. However, he has not shown the same intensity with regard to resolving his financial situation. If he is able to get his finances under control, he may be eligible for a security clearance in the future. He is not eligible now because continuation of financial irresponsibility is likely, and the potential for pressure or duress remains undiminished. Overall, the record evidence creates 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not 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 denied.

WILFORD H. ROSS  
Administrative Judge