



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



In the matter of: )  
)  
) ISCR Case No. 20-03167  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se.*

05/10/2023

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 23, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 5, 2022, and he requested a hearing before an administrative judge. This case was assigned to me on February 1, 2023. The notice of hearing was issued on March 3, 2023, scheduling the hearing for March 30,

2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 7. There were no objections to the Government's exhibits, and they were admitted in evidence. Applicant testified and did not offer any exhibits. The record was held open until April 18, 2023, to permit the Government and Applicant an opportunity to provide additional documents. The parties provided GE 8 and Applicant Exhibits (AE) A through G. There were no objections to any of the exhibits, and they were admitted in evidence. DOHA received the hearing transcript (Tr.) on April 7, 2023.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except ¶ 2.a. His admissions are incorporated into the 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 46 years old. He served in the National Guard from December 2008 to January 2017. He deployed to Afghanistan for 12 months in 2011 and 2012. He received an honorable discharge. He earned a bachelor's degree in 2017. He is not married. He has one child. Applicant testified he has been steadily employed with no periods of unemployment. He has worked for his current employer since September 2018. He stated he held a secret security clearance from 2009 and it was upgraded to a top secret clearance in 2018. (Tr. 8, 17-20, GE 1)

Applicant's answer to the SOR; statements to government investigators; hearing testimony; and credit reports from May 2019, April 2020, May 2020, and February 2022 corroborate the SOR allegations.

In 2015, while serving with the National Guard, Applicant was scheduled to deploy, but due to a medical disqualification, he was unable. He was paid for the deployment anyway. In August 2018, Applicant was interviewed by a government investigator. He was confronted with the debt in SOR ¶ 1.a (\$25,953) owed to the federal government for repayment of the deployment pay he should not have received. He said he was advised of the overpayment in February 2016. He told the investigator that he was working two jobs and planned to make payment arrangements to resolve the debt. He also said he did not have any other delinquent accounts and his current finances were good. (Tr. 22-35; GE 6)

In July 2020, Applicant was interviewed again by a government investigator. He acknowledged he owed the debt to the federal government for the overpayment as alleged in SOR ¶ 1.a. He told the investigator that he was unable to make the payments to repay the debt. He said he was making more money and was going to look for additional employment. He planned to contact the creditor in July 2020 and make payment arrangements. (GE 7)

Applicant testified that after he received the overpayment, his first sergeant advised him that he would have to repay the amount. Applicant said he did not know about the overpayment until his first sergeant told him. He testified that the money was

deposited into an account he did not check. He received approximately \$25,953, as alleged. He did not contact anyone while he was in the military to make payment arrangements. He said he did not know who to contact. When he was discharged from the military, he did not make arrangements to repay the amount owed. He testified that sometime in 2020, he received a letter in the mail from the federal creditor telling him he had to pay the debt. He then set up an automatic payment of \$500 a month to repay the debt. Applicant testified that he kept the overpayment in a designated account and could pay most of the debt. He admitted he used about \$1,000 of the money for his personal expenses. When questioned why if he had the overpayment money in his personal account, he said he did not have it to pay it all back. He said he did not know. He said he currently had about \$12,500 of the overpayment in his account and could pay that amount immediately. It is unknown what he spent the balance of the overpayment on, but it was not readily available in his account. I did not find Applicant's testimony credible. (Tr. 22-35)

Post-hearing, Applicant provided a document dated April 5, 2022, from a third-party collector for the Department of the Treasury. It reflected an agreement with Applicant from December 2020 to pay \$494 a month. He provided proof that he has made payments from May 2022 until March 2023. The balance owed in April 2022 was \$22,162, which includes penalties and costs. On April 14, 2023, after his hearing, he made a \$10,000 payment toward the debt. He did not provide evidence if he made any payments in accordance with the agreement prior to May 2022. (AE A, B)

Applicant attended college full time from 2009 until he graduated in May 2017. He used his military educational benefits and student loans to fund his education. He defaulted student loans, alleged in SOR ¶¶ 1.b through 1.h and 1.j-1.l total approximately \$63,115. In July 2020 when questioned by a government investigator, Applicant acknowledged all of his delinquent student loans and told the investigator that he planned on contacting the creditor that day to discuss options for getting the debts out of collection and paid. He testified that he never followed up on contacting the creditor. He said that the creditor never contacted him about repaying the debts, so he did not make any payments. He said if he does not receive a bill, he does not know how to pay the debt. He said he pays all of his expenses through automatic withdrawals. He said now that he knows how to pay the debts, he will. (Tr. 36-38, 57-59; GE 2, 3, 4, 5, 7)

In July 2020, Applicant was confronted by the government investigator with a debt owed to the Department of Veterans Affairs (VA). (SOR ¶ 1.m \$1,488) He told the investigator this was a loan for education. He stopped attending class and received an incomplete, which resulted in an overpayment to him. He said he was paying the debt through monthly installments, but then he had to start child support payments. He planned to contact the VA in July 2020 to set up payment arrangements to pay the debt in full. He testified that he did not make arrangements to pay this debt. (Tr. 42-44; GE 7)

SOR ¶1.i alleged child support arrearages of \$4,283. Applicant testified that he had his child support payments automatically withdrawn from his paycheck. When he changed jobs, he was unaware that the automatic payments stopped. When he found

out, he began making cash payments for the child support to the mother. He stated he does not owe any arrearages, and he is current on his child support. He provided a copy of an online payment inquiry dated March 29, 2023. It states the non-custodial parent's order balances and specifically states that it is not an official document and may not be complete regarding information about child support. It appears there is a balance owed of \$1,427. Applicant did not provide any specific information about the current balance owed. (Tr. 39-42; AE E)

Applicant testified that he was unable to pay his debts because two years ago his mother developed medical problems and he has been helping her financially. He gives her about \$200 a month to help pay for medication and also occasionally he helps with other unexpected expenses. He bought her a washer and dryer that cost about \$600 about six months ago. (Tr. 21, 38, 48-50, 61)

Applicant testified that his annual income is approximately \$70,000. He has about \$1,800 of expendable monthly income. He will no longer be required to pay child support in June 2023, when his son reaches majority. Applicant has approximately \$11,500 in his checking and savings account. He works as a driver for three different rideshare companies and depending on how much he works he could make an additional \$300 a month. He testified that he intends to start paying all of his debts, he just needs more time. (Tr. 17, 21, 46-48-50; AE G)

Applicant completed a security clearance application (SCA) in March 2018. Questions under Section 26, regarding his finances, asked if he was currently delinquent on any Federal debt, and he responded "no." He did not disclose his debts to the federal government alleged in SOR ¶ 1.a for an overpayment, ¶¶ 1.b through 1.h and 1.j through 1.l for student loans, or his VA debt in ¶ 1.m. Applicant's explanation was that he did not understand the question. He was aware since February 2016 that he owed a debt to the federal government for his overpayment made for the deployment he did not take. I did not believe he misunderstood that he had to disclose this debt. I find Applicant deliberately failed to disclose the debt in SOR ¶ 1.a owed to the federal government. (Tr. 45, 52-58; GE 1)

It is unclear that since Applicant graduated from college in May 2017 if his student loans would have been due to be paid or delinquent when he completed his SCA in March 2018. I have insufficient evidence to conclude he deliberately failed to disclose that his student loans and VA loan (SOR ¶¶ 1.b - 1.h and 1.j - 1.m) were delinquent when he completed his 2018 SCA.

Applicant completed another SCA in January 2020. Questions under Section 26, regarding his finances, asked if he was currently delinquent on any Federal debt, and he responded "no." It also asked if in the last seven years if he had been delinquent on alimony or child support. He responded "no." Applicant testified that when he completed the January 2020 SCA, he did not know it was an SCA. He believed it was an application for some other job with his company. He also testified that he had completed SCAs in the past. I did not find his testimony credible. Applicant did not disclose his debts owed to the

federal creditor alleged in SOR ¶ 1.a, which he had been aware of since 2016. In 2020, he had not made payments on his student loans, and they were delinquent, and he did not disclose any of them or his VA debt. I find he intentionally failed to disclose these debts were delinquent. (Tr. 45; GE 8)

The evidence supports that Applicant was paying the mother of his child directly for child support and it was not being accounted for by the state. I find he did not intentionally fail to disclose his child support issue on his January 2020 SCA. There is insufficient evidence regarding whether he was aware he was delinquent on his child support payments.

## **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:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has been aware that he received an overpayment by the government for unearned deployment pay since at least 2016. He graduated from college in 2017 and has not made payments towards his student loans, which were delinquent. He dropped a class that was paid for by the VA and has failed to pay the debt associated with it. Despite stating he had the money to repay the overpayment, he failed to do so and used some of it for his personal expenses. The above disqualifying conditions 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, 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant testified that he had the money to reimburse the government for the overpayment, but he did not. He has been on notice about this debt since 2016 and it was addressed by the government investigator with him in July 2020. It appears he made a payment arrangement in December 2020 but he only provided proof of monthly payments that began in March 2022, after receipt of his SOR. Despite saying he had the overpayment (SOR ¶ 1.a) in an account, he did not offer an explanation for why he was not able to repay the entire amount immediately. He made a lump-sum payment of \$10,000 after his hearing. He did not provide evidence that he has made payment arrangements for his student loans or to repay the VA loan. Applicant's debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to helping his mother with some of her expenses in the past two years. He did not offer other explanations for his failure to

address his delinquent debts, either before then, or since. Although this support may have had some impact recently on his finances, no explanations were offered for why he has not addressed the debts before then. There is insufficient evidence that his financial problems were beyond his control, and he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

There is no evidence that Applicant participated in financial counseling or that there are clear indications his financial problems are being resolved. AG ¶ 20(c) does not apply.

There is some evidence that after receiving the SOR, Applicant made payments toward the overpayment debt in SOR ¶ 1.a. There is concern that this is money that he said he had in an account, but clearly he spent some of it. That does not show a good-faith effort to repay the overdue creditor. However, he is given some credit for reducing the amount he owes, but it is insufficient to mitigate his previous conduct. AG ¶ 20(d) has minimal application to this debt. He did not provide evidence of payments towards his other delinquent debts.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concerns 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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 employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

SOR ¶ 2.a alleged that Applicant failed to disclose on his March 2018 SCA his overpayment debt to the government, delinquent federal student loans, and his VA loan. Substantial evidence supports that he was aware of the overpayment debt and intentionally failed to disclose it. There was insufficient evidence to conclude that at that point his student loans and VA loan were delinquent. I also find that there is insufficient evidence to conclude he was aware that his child support was delinquent. I find for



Applicant under SOR ¶ 2.a for the debts alleged in SOR ¶¶ 1.b through 1.m with regard to his 2018 SCA. I find he intentionally failed to disclose the overpayment debt in SOR ¶ 1.a.

SOR ¶ 2.b alleged that in his 2020 SCA, Applicant failed to disclose all of the delinquent debts alleged in SOR ¶¶ 1.a through 1.m. I found that he was aware of the overpayment debts, student loans, and VA debt in 2020 and intentionally failed to disclose them. There is insufficient evidence he failed to disclose the child support debt in SOR ¶ 1.i, and I find for him on that specific allegation.

I did not find Applicant credible in his explanation for why he failed to disclose his other delinquent debts. He was on notice since 2016 regarding the overpayment and had not made any payments on his student loans. He was aware he was responsible for repaying the VA for the class he dropped. The above disqualifying condition applies.

I have considered all of the mitigating conditions under AG ¶ 17, The following are potentially applicable to the disqualifying security concerns based on the facts:

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

(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

Applicant did not make a prompt or good-faith effort to correct the omission. Failure to disclose required information on an SCA is not a minor offense. There is insufficient evidence that it happened under unique circumstances, and it is noted that it occurred on a 2018 and again on a 2020 SCA. His conduct casts doubt on his reliability, good judgment, and trustworthiness. The above mitigating conditions do not apply.

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

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

### **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.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant (except for SOR ¶¶ 1.b-1.m)
Subparagraph 2.b:	Against Applicant (except for SOR ¶ 1.i)

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge