



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



In the matter of:	)	
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	)	ISCR Case No. 22-00256
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Tara Karoian, Esquire, Department Counsel

For Applicant:  
*Pro se*

May 18, 2023

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on July 27, 2020. (Government Exhibit 1.) On July 5, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). 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 August 4, 2022, and requested a hearing before an administrative judge. The Answer included one attachment (Attachment). Department Counsel was prepared to proceed on September 19, 2022. The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued an Amended Notice of Hearing on October 14, 2022. The case was heard on November 8, 2022. DOHA received the transcript (Tr.) of the hearing on November 18, 2022.

The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibit A, which was also admitted without objection. He asked that the record remain open until December 2, 2022, for the receipt of additional documentation. No further documentation was received from him, and the record closed on December 2, 2022.

### **Findings of Fact**

Applicant is 29 years old and recently married with one child. He has a high school diploma. He is employed by a defense contractor as a mariner and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 25; Government Exhibit 2 at 2; Tr. 7-8, 26-28.)

#### **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. The SOR specifically alleged that Applicant has three debts that were charged off, or in collection, in the total amount of approximately \$60,919. (SOR 1.a through 1.c.) He admitted SOR allegation 1.c with an explanation. He denied allegations 1.a and 1.b, stating that he had paid those debts in 2015.

The existence and amount of the debt in SOR allegation 1.c is supported by Applicant's admission in his Answer. All three debts are confirmed by credit reports submitted by the Government dated December 20, 2019; April 17, 2020; August 6, 2021; and June 24, 2022. (Government Exhibits 4, 5, 6, and 7.) The existence of the debts is also supported by his 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 June 29, 2020. (Government Exhibit 2.)

Applicant stated that his financial difficulties were due to his being a mariner. He works full time, but only periodically. He only earns money when he is at sea, which can be for up to three to four months at a time. He does not have an income when he is on

shore for up to three or four months between ships. (Government Exhibit 2 at 3; Tr. 60-62.)

The current status of the debts is as follows:

1.a. Applicant denied owing Credit Union A \$13,519 for account One. That debt was charged off.

1.b. Applicant denied owing Credit Union A \$25,207 for account Two. That debt was charged off.

The above debts will be discussed together for convenience. Applicant admitted the existence of both of these debts but maintained that he had paid them in 2015. In support of that statement he provided loan documents from Credit Union B as the Attachment to his Answer. The Attachment shows that his aunt cosigned a \$50,000 loan with him from Credit Union B in May 2015.

Applicant Exhibit A consists of two checks dated May 30, 2015, drawn on Credit Union B and made payable to two different accounts with Credit Union A. Applicant stated that he had asked Credit Union A for a pay-off figure on the two subject accounts in the SOR. After he received the figures, he had Credit Union B make out the checks. The checks were actually made payable to two other accounts Applicant had with Credit Union A at the same time. A check for \$18,815.85 was made out for Credit Union A, account Three. A second check for \$24,464.43 was made out for Credit Union A, account Four. The credit reports show that accounts Three and Four have been paid. The same reports show that accounts One and Two remain unpaid and charged off. (Government Exhibits 4, 5, 6, and 7; Tr. 31-32, 57-59.)

Upon reviewing the Government's exhibits before the hearing Applicant discovered the apparent mistake and went to discuss the situation with Credit Union A shortly before the hearing. According to him, a teller at Credit Union A showed him that the debts alleged in the SOR were actually two additional unpaid debts that he owed at the same time in 2015-16. This was confusing to him, and he informed the teller that he was still unsure of which accounts were his and that Credit Union A appeared to have additional money of his that was unaccounted for. The teller informed him that she would look into the situation and get back to him. As stated, he was given additional time to provide evidence as to his financial situation, including any information from Credit Union A, and no additional information was provided. Based on the available evidence, I find he has not paid or otherwise resolved either of these two debts. (Tr. 29-44, 49-50.)

1.c. Applicant admitted owing \$22,193 for an account that has been charged off. The credit reports in the record show that this account was opened in 2016 and he stopped paying on the debt in 2017. This account was transferred or sold, and the new

owner sued Applicant in 2019. A default judgment was entered against him in August 2021. He stated that the court and/or the creditor was trying to work with him on a payment arrangement during the COVID 19 pandemic. He was not able to provide any additional information showing that this debt had been paid or otherwise resolved. (Answer; Government Exhibits 4, 5, 6, 7, and 8; Tr. 44-49, 53-56, 59-60.)

Applicant testified that his current financial situation is stable. He realizes 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. 50-53, 60.)

### **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 three large debts that were charged-off in the total amount of approximately \$60,919. 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. I have considered his statements that he paid off allegations 1.a and 1.b in 2015. However, he has not supported that statement with evidence from Credit Union A, despite my giving him time to provide it. He has very little knowledge of the situation regarding the debt in allegation 1.c. There is little to no evidence that he has behaved responsibly under the circumstances, as required by AG ¶ 20(b). He is fully aware of the impact delinquent debt can have on his security clearance eligibility, but has not done sufficient work to resolve the issue. None of the mitigating conditions are applicable to his situation. Paragraph 1 is found against 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 has not presented sufficient evidence to show that he is resolving his debt situation in a responsible manner. He is not eligible for national security eligibility 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.c:	Against 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