



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00459
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

04/18/2023

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. He mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline H (drug involvement and substance misuse). Applicant provided a response to the SOR (Answer) on May 25, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on January 18, 2023.

The hearing was convened as scheduled on March 15, 2023. I admitted Government Exhibits (GE) 1 through 6 in evidence without objection. At the hearing, Applicant testified but did not provide documentary evidence. At Applicant's request, I held the record open until March 29, 2023, to allow him to provide documentary evidence. He timely submitted AE A, which I admitted in evidence without objection. I received a transcript (Tr.) of the hearing on March 22, 2023.

## Findings of Fact

Applicant is a 36-year-old employee of a government contractor for whom he has worked since February 2021. He earned a high school diploma in 2004. He has never been married and has no children. He served on active duty with the Army from June 2004 until February 2014, when he earned an honorable discharge. He deployed three times while he was in the Army. (Tr. 32-36, 61-62; GE 1, 2)

Applicant purchased and used marijuana with varying frequency from about 2017 until November 2020. Throughout the time he used it, marijuana use did not violate state law in State A, where he resided. However, marijuana use and possession was, and continues to be, illegal under federal law. He started using marijuana to relax. He either used it through a vape pen or a joint. His marijuana use varied from one to two hits on the weekend from 2017 until 2019, to daily use from February 2020 to November 2020. He stopped using marijuana in November 2020 because he realized it was not helping his mental state and because he was moving in with his aunt, who did not want marijuana in her house. He noticed an improvement in his mood and his mental state within days of ceasing his marijuana use. He does not intend to use marijuana in the future as he believes it is harmful to his mental health. (Tr. 26, 37-38, 47-49; Answer; GE 2)

In the SOR, the Government alleged Applicant's six delinquent debts totaling approximately \$16,000 (SOR ¶¶ 1.a through 1.f). These delinquencies consist of an overdrawn bank account (SOR ¶ 1.a), a vehicle loan (SOR ¶ 1.b), unpaid automobile insurance (SOR ¶¶ 1.c and 1.f), a utility (SOR ¶ 1.d), and a credit card (SOR ¶ 1.e). He admitted the SOR allegations with additional comment. His admissions are adopted as findings of fact. (SOR; Answer)

The overdrawn bank account in the amount of \$11,469 alleged in SOR ¶ 1.a has not been resolved. Applicant overdrew this account when he quit his job in February 2020 and failed to stop previously scheduled automatic withdrawals. He claimed that he thought the balance was inaccurate and, when he called the collection agency in June 2022, it allegedly agreed that he only owed \$1,469. On June 10, 2022, he made a payment of \$105 on this account. He provided documentation to corroborate this payment. He did not provide documentation to corroborate the lower balance. He has not taken additional action on this account after making the June 10, 2022 payment, but he plans to do so in the future. (Tr. 26-28, 49-52, 71-72; Answer; GE 2-6; AE A)

The delinquent vehicle loan in the amount of \$4,118 alleged in SOR ¶ 1.b has not been resolved. Applicant provided documentary evidence that, after the hearing, he made a \$100 payment on this account on March 21, 2023. The account became delinquent in February 2019 when he voluntarily surrendered the secured collateral because he could not afford to make the required payments. Prior to his March 21, 2023 payment, he last made a payment on this account in April 2020. He plans to make payment on this account in the future. (Tr. 28-30, 58-61; Answer; GE 1-6; AE A)

The delinquent insurance account in the amount of \$143 alleged in SOR ¶ 1.c has been resolved. Applicant first became delinquent on this account in August 2020. He paid this account in full in June 2022. He provided documentary corroboration of this payment. The debt does not appear on the latest Government credit report. (Tr. 30-31, 52-53, 73-74; Answer; GE 2-5; AE A)

The delinquent utility for internet services in the amount of \$367 alleged in SOR ¶ 1.d has not been resolved. Applicant first became delinquent on this account in December 2020. He claimed that he paid this account in full, but he only provided documentary corroboration of a \$90 payment in September 2022. He claimed that he thought the account is no longer delinquent because it no longer appears on an undisclosed credit report. However, the debt still shows as delinquent on all the Government credit reports. (Tr. 30-31, 52-53, 74; Answer; GE 2-6; AE A)

The delinquent credit card in the amount of \$682 alleged in SOR ¶ 1.e has been resolved. This credit card became delinquent in April 2020. Despite Applicant's testimony that he does not believe he has resolved this account, two of the Government's credit reports reflect this account is a paid charge-off that was paid in June 2021. (Tr. 31, 53-55; Answer; GE 2-6)

The delinquent insurance account in the amount of \$97 alleged in SOR ¶ 1.f has been resolved. This account became delinquent in April 2021. Applicant claimed that he paid this account in full on an undisclosed date. He provided no documentary corroboration of a payment. However, this debt appears on the Government's April 2021 credit report, but not on the 2022 and 2023 Government credit reports. (Tr. 30-31, 52-53, 74; Answer; GE 2 and 3)

Applicant attributed his financial issues to several causes. He was unemployed from February 2020 until December 2020 because he quit his job while suffering from depression and loneliness. He claimed that his credit has been bad his whole life. He acknowledged that he does not pay sufficient attention to his finances partly because he does not care enough about them. While it is not alleged in the SOR, he has had two additional vehicles repossessed in the past. Any adverse information not alleged in the SOR, such as Applicant's additional vehicle repossessions, will not be considered for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). He claimed that he will pay off the delinquent SOR accounts in the future, but he also made such claims multiple times beginning as early as March 2021. (Tr. 28-30, 38-46, 55-58, 60-61, 76-77; Answer; GE 1 and 2)

Since February 2021, Applicant's take-home pay has been about \$3,600 per month. He does not follow a budget and did not provide evidence that he has received financial counseling. He pays his father \$500 per month for rent and a phone. He pays \$600 per month on a car that he purchased via financing in April 2022, and \$220 per month for auto insurance. He claimed that he has about \$1,000 to \$1,500 left over per

month after paying his bills, but he acknowledged that he has no money in his savings account, lives paycheck to paycheck, and does not save any money. On the day of the hearing, he had about \$1,700 in his checking account, as he had just received his paycheck. He has about \$2,000 in a retirement account. (Tr. 63-71)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

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

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

Applicant had six delinquent debts totaling about \$16,000. Many of those debts have been delinquent for years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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's financial delinquencies are ongoing and therefore recent. Half of the SOR debts, including the two largest, remain unresolved. Given his statements about his inability to save, budget, or pay attention to his finances, I cannot find that his financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of his unemployment when he quit his job. These conditions were beyond his control. However, his financial issues also arose because of his admitted negligence about his finances. These conditions were within his control. To the extent conditions were beyond his control, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these debts. While he resolved some of the smaller SOR debts, he largely did so after he received the SOR. On several of the unresolved SOR debts, he made a relatively small payment after the SOR was issued, but he did not continue making payments. Given these considerations, he has failed to show that he acted responsibly under the circumstances and AG ¶ 20(b) does not apply.

Most of Applicant's efforts to resolve his delinquent debts came after he received the SOR. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). AG ¶ 20(d) does not apply.

Applicant disputed the balance of the debt in SOR ¶ 1.a and claimed that the creditor acknowledged that the balance is lower than that listed on the SOR. However, he provided no documentary evidence to corroborate the lower balance. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Regardless, he admitted owing a balance on the account, and acknowledged that except for one payment he made on this account after the SOR was issued, this debt remains unresolved. AG ¶ 20(e) does not apply.

None of the Guideline F mitigating factors are fully applicable. Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment.

## **Guideline H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant illegally purchased and used marijuana with varying frequency from about 2017 until November 2020. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following is potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant has not purchased or used marijuana for over three years. This time span is significant. He credibly testified that he will not purchase or use marijuana again because it negatively affects his mental state. Given the totality of his past drug use, his credible testimony, and his lengthy period of refraining from use, I believe that he has established a sufficient period of abstinence from illegal drugs and that his illegal drug purchase and use is unlikely to recur. I conclude his past, illegal drug involvement does not cast doubt on his current reliability, trustworthiness, and good judgment. The drug involvement and substance misuse security concerns are mitigated.

## **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 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and H in my whole-person analysis. I have also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns. He mitigated the drug involvement and substance misuse security concerns.

## **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.f:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.



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Benjamin R. Dorsey  
Administrative Judge