



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



In the matter of: )  
)  
) ISCR Case No. 22-02154  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

05/30/2023

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**Decision**

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Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations or personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. On November 30, 2022, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on March 3, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 21, 2023. He responded on April 11, 2023, with a narrative and payment receipts consisting of nine pages (FORM Response). The case was assigned to me on May 9, 2023. The Government exhibits

included in the FORM, marked as Items 1-6, and the FORM Response are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor for whom he has worked since April 2022. He earned a high school diploma in 2010. He took some college courses between 2010 and 2012 but did not earn an undergraduate degree. He has never been married. He has a five-year-old child. (Item 3)

Applicant had four delinquent debts totaling approximately \$32,000. In the SOR, the Government alleged these delinquent debts. (SOR ¶¶ 1.a through 1.d) These delinquencies consist of a vehicle loan (SOR ¶ 1.a), credit cards (SOR ¶¶ 1.b and 1.c), and a medical bill (SOR ¶ 1.d). He admitted these allegations. His admissions are adopted as findings of fact. Those SOR allegations are established through his admissions and the Government's credit reports. (Items 2-6)

Despite being required to do so, Applicant failed to divulge the delinquent debts identified as SOR ¶¶ 1.a and 1.d on his May 2022 Electronic Questionnaires for Investigations Processing (e-QIP). He did disclose the delinquent credit cards listed in SOR ¶¶ 1.b and 1.c. During his June 2022 security interview, he told the DOD investigator that he intentionally did not list these debts on his e-QIP because he was "embarrassed." There is no evidence that he volunteered these delinquencies before the DOD investigator confronted him with them. The Government alleged his deliberate failure to list these delinquent debts in SOR ¶ 2.a. In his response to the SOR, he admitted this allegation. His admission is adopted as a finding of fact. (Items 1-6)

The delinquent vehicle loan in the amount of \$14,356 alleged in SOR ¶ 1.a is being resolved. Applicant co-signed on this loan in July 2018, to help a work colleague purchase a vehicle. The work colleague failed to make the required payments on the car and defaulted on the account in October 2020. Applicant tried to make payments on the account, but he could not regularly afford to do so. Prior to the Government issuing the SOR, the last payment on this account was in November 2019. On March 28, 2023, he made a \$300 payment that he corroborated with a receipt he submitted. He claimed that he has a monthly payment arrangement with the creditor to satisfy this debt. (Items 1, 2, 4-6; FORM Response)

The delinquent credit cards in the amounts of \$9,480 and \$8,702, alleged in SOR ¶¶ 1.b and 1.c, respectively, are being resolved. Applicant opened the account listed in SOR ¶ 1.b in March 2013. The date of last activity on this account prior to the SOR was January 2019. On March 24, 2023, he made a payment of \$50 on this account. On March 26, 2023, he made a payment arrangement with the creditor to pay 72 monthly payments of \$130.97 beginning in April 2023. He opened the credit card in SOR ¶ 1.c in September 2014. The date of last activity on this account prior to the SOR was December 2018. On March 24, 2023, he made a payment of about \$217 on this account. On March 26, 2023, he made a payment arrangement with the creditor to pay 40 monthly payments of about \$217. The March 2023 payment represented the first of

his 40 payments. He provided documentary evidence to corroborate his payments and payment arrangement on both these accounts. (Items 1-6; FORM Response)

The medical account in the amount of \$172 listed in SOR ¶ 1.d has been resolved. Applicant became delinquent on this account in April 2018. He provided documentary corroboration that he paid this account on March 24, 2023. (Items 1, 2, 4-6; FORM Response)

Applicant claimed that he began having financial difficulties in about 2016 because he assisted his mother financially with her health issues. He also claimed that the issues he had because he co-signed on the car loan listed in SOR ¶ 1.a kept him from getting back on track with his finances. He claimed that he has learned from his mistake of co-signing for a colleague and will never do so again. He presented no evidence to show he has participated in financial counseling or has a working budget. He did not present evidence of his current financial situation, such as his gross monthly income, deductions, monthly expenses, and monthly net remainder. (Items 2-4)

### **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 four delinquent debts totaling about \$32,000. He was delinquent on these debts 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Except for the medical debt, which he has paid, Applicant's financial delinquencies are ongoing. While he recently made one payment on each of the remaining SOR debts, without evidence of his current financial situation, I cannot assess whether he is still financially overextended. Therefore, 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 mother's health problems. These conditions were beyond his control. His financial issues also arose because he made the decision to co-sign a car loan for his work colleague. This cause was within his control. For AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these debts. He began to make efforts to resolve his SOR debts well after the Government issued the SOR. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance or eligibility for a public trust position 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). Given the late timing of his resolution attempts, and the lack of evidence of his financial stability, he has not provided sufficient evidence that he acted responsibly under the circumstances or that he resolved the debts in good faith. AG ¶ 20(b) and AG ¶ 20(d) do not apply. He has not mitigated the financial considerations security concerns.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to divulge two of the SOR debts on his e-QIP because he was embarrassed by them. The above disqualifying condition is applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence that Applicant divulged the debts listed in SOR ¶¶ 1.a and 1.d prior to being confronted with them. AG ¶ 17(a) does not apply.

AG ¶ 17(c) does not apply to Applicant's intentional falsification. Falsification of an e-QIP is not "minor" because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). Moreover, there is insufficient evidence to show that his falsification is unlikely to recur. The personal conduct security concerns are not 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 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.

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 or personal conduct 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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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