



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02579
	)	
Applicant for Security Clearance	)	

**Appearances**

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

06/27/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts or personal conduct security concerns arising from his failure to disclose any delinquencies on his security clearance application, as required. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 13, 2022. On January 9, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The CAS issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

In an undated response to the SOR, Applicant elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On March 6, 2023, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA mailed the FORM to Applicant on or about March 8, 2023, and he received it on March 20, 2023. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. On April 26, 2023, the case was forwarded to the DOHA hearing office for assignment to an administrative judge for a decision on the written record. The case was assigned to me on June 1, 2023.

The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2-6 are admitted into evidence without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all but one of the SOR debts alleged under Guideline F (SOR ¶¶ 1.a-1.l), all with the same explanation. He denied the remaining debt (SOR ¶ 1.m) and denied the falsification allegation under Guideline E (SOR ¶ 2.a). His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He is employed as a security officer. According to his SCA, he has worked for the employer sponsoring him for a clearance since June 2022. He also reported working as a security officer for another employer since June 2018. He previously worked for another employer in a similar job from February 2019 to June 2022. Before that, he was unemployed from 2011 to 2018 and then worked part-time from May 2017 to February 2019. He served in the Marine Corps from 1986 to 1990 on active duty and then from 1990 to 1999 he served in the Marine Corps Reserve. He was discharged honorably. He married in 1996, and he and his wife separated in July 2018. They remain separated. He and his wife have two adult children in their 20s. (Item 2)

The record includes credit bureau reports (CBRs), from July 2022 and March 2023 (Items 4, 5), which establish the delinquent accounts alleged in the SOR.

The SOR debts total \$60,334 in past-due debts, either charged off or reported for collection. All but one of them appear to be consumer credit accounts. Applicant asserts in his SOR Answer that all of the charges were made by his spouse during a time when he was not working. He said she was paying on the debts until they separated. He said he was not aware of them until he spoke to the investigator (during his background interview). Applicant provided no indication that any debts have been, or are being, paid, or that he has taken any steps to resolve or dispute them.

All of the debts are listed on Applicant's July 2022 credit report (Item 4) and most of them are listed on his March 2023 credit report as well. (Item 5) All of the accounts

listed in the SOR are listed as “Indiv Acc” (Individual account) on his July 2022 credit report. (Item 4)The debts are detailed as follows:

SOR ¶ 1.a (\$18,527) is a credit account that has been charged off by a department store. SOR ¶ 1.b (\$10,063) is an account that has been charged off by a bank. SOR ¶ 1.c (\$6,255) is an account placed for collection by a bank. SOR ¶ 1.d (\$5,822) is an account that has been charged off by a bank.

SOR ¶¶ 1.e (\$5,036), 1.f (\$4,352) and 1.g (\$2,287) are accounts placed with the same collection agency by three separate banks. SOR ¶ 1.h (\$2,286) is an account placed for collection by a bank. It has the same account number and the same bank creditor as the debt at SOR ¶ 1.g, so I conclude it is the same debt.

SOR ¶ 1.i (\$1,957) is an account placed for collection by a bank. SOR ¶ 1.j (\$1,879) is a credit account placed for collection by a department store. SOR ¶ 1.k (\$1,087) is an account placed for collection by a credit card company. SOR ¶ 1.l (\$568) is an account placed for collection by a bank. SOR ¶ 1.m (\$215), which Applicant denies without further explanation, is a cable account placed for collection.

Applicant did not disclose any delinquent debts on his SCA. (Item 2 at 32-33). In his September 2022 background interview, he confirmed his negative answers to all financial related questions on his SCA and did not acknowledge any delinquencies. He was then confronted with evidence of his debts. He then said they were all credit cards or store credit card accounts that his wife opened. He said she would pay the accounts until they separated but then stopped making the payments out of spite. He thinks she opened more accounts after they separated. He asserted that he gets no information from creditors, such as bills or notices. He said he did not list them on his SCA because he did not have information about them at the time. He said he planned to address these accounts appropriately during divorce proceedings with his divorce attorney. He never used these cards but the balances are probably right. (Item 3)

Applicant did not provide any documents with his answer to the SOR. There is no indication that he has made any effort to pay or resolve any of his SOR debts. He has not indicated that he has participated in credit counseling or follows a budget.

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a),

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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 admitted all but one of the delinquent debts alleged, though he asserted that they are his wife's responsibility. He and his wife are separated but he has given no indication that they are formally divorced. The SOR debts are all established by credit reports in the record. All of them are established as individual accounts, in his name. AG ¶¶ (a) and 19(c) apply. The exception is SOR ¶ 1.h, which is listed as a debt with both the original creditor (¶ 1.h) and the collection agency (¶ 1.g). SOR ¶ 1.h is therefore a duplicate.

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, or 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 did not provide sufficient evidence to establish that any mitigating condition should apply. His assertion that his wife, from whom he is separated, is responsible for all of the debts, is uncorroborated. He did not accept responsibility for any of them. He did not establish that he has taken any steps to address, pay, resolve, settle, or dispute any of the debts listed in the SOR. The debts are all ongoing, and none have been resolved.

## Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern 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 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 conditions are 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under Guideline E, the Government alleged that Applicant deliberately failed to disclose the 13 delinquent debts (SOR ¶¶ 1.a-1.m) listed on his July 2022 CBR when he submitted his SCA the same month. Applicant denies the allegation of falsification but offered no explanation for the omission.

In his background interview, Applicant did not acknowledge any debts until he was confronted about them. He said his wife was responsible for all of the debts and stopped paying on them after they separated. All of the accounts are listed as individual accounts on his credit report. Yet he asserted that he did not get any bills or notices about them and that he did not know anything about them when he submitted his SCA. I do not find this assertion credible. I conclude that AG ¶ 16(a) is established, notwithstanding Applicant's denial.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(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.

Falsification of a security clearance application is a serious matter. It goes to the heart of an applicant's judgment, trustworthiness, and eligibility for a clearance. During his interview, Applicant confirmed his negative responses to the financial questions on his SCA and did not acknowledge any delinquencies until he was confronted about them.

Once disqualifying conditions are established, Applicant has the burden to establish mitigation. He has not done so. AG ¶¶ 17(a) and 17(c) 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(a), 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 did not provide sufficient evidence to mitigate his delinquent debts and did not sufficiently or credibly explain why he did not list them on his SCA. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For 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.g, 1.i-1.m:	Against Applicant
Subparagraph 1.h:	For Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

**Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge