



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



In the matter of: )  
)  
) ISCR Case No. 21-00417  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William Miller, Esq., Department Counsel  
For Applicant: *Pro se*

07/28/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant leased a truck in 2006. He placed the vehicle in storage and in his father’s care when he deployed in 2009. The vehicle was later wrecked, probably by his sister, who was not authorized to drive it. Applicant contacted the creditor to reacquire the vehicle at the end of the lease, but never got confirmation. The account remained unresolved for several years, until 2018, when he learned it remained on his credit report as a charge off. Subsequent efforts to contact the creditor and resolve his responsibility for the debt proved largely fruitless. The debt remains unresolved. However, the unusual, isolated nature of the debt, as well as its age and origins beyond his control are factors to be considered in mitigation. No other past-due debts are evident on his current credit report. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 6, 2019. On July 2, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR

under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant received the SOR on January 9, 2022, and he responded on March 10, 2022. He requested a hearing before an administrative judge. The case was assigned to me on April 18, 2023.

On April 27, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 15, 2023, by video teleconference through an online platform. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5. Applicant testified and submitted Applicant's Exhibits (AE) A and B. All of the exhibits were admitted without objection. I held the post-hearing record open to allow him the opportunity to submit additional information. He timely submitted his DD-214 (AE C) and two documents from the Department of Veterans Affairs (VA) (AE D), all of which were admitted without objection. DOHA received the hearing transcript (Tr.) on May 25, 2023. The record closed on May 31, 2023.

### **Findings of Fact**

Applicant admitted both debts, SOR ¶¶ 1.a and 1.b, with brief explanations. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He has been married twice and he has three children. He and his second wife divorced in April 2023. He earned an associate degree in 2018. He served as an infantryman on active duty in the U.S. Army from 2007 to 2016, with a clearance. (Tr. 10, 22) He deployed to Iraq and Afghanistan. He was awarded two Army Commendation Medals and four Army Achievement Medals. He was discharged honorably as a sergeant (E-5). (GE 1; AE C) Applicant has a 100% service-connected disability as rated by the VA, and he receives \$4,172 monthly in compensation. (AE D; Tr. 37-38) He has worked for a defense contractor in aviation maintenance since 2018. He has an annual salary of about \$67,000, an increase from about \$55,000 when he started. (GE 1; Tr. 36-37, 39, 73-74) He pays about \$1,455 monthly in combined child support and is current. (Tr. 75)

The two SOR debts are established by Applicant's admissions and by listings on a credit report from November 2019. (GE 3) He also discussed them in his background interviews in November 2019 and December 2019. (GE 2)

SOR ¶ 1.b (\$1,687) is a past-due cell phone bill that has been placed for collection. (GE 3 at 7) Applicant said he signed the account over to his father to help him out but his father did not pay the debt. Applicant documented that the debt has been paid and no balance is due. (AE A; Tr. 22-23, 64-65)

SOR ¶ 1.a (\$39,263) is a charged-off account related to an old auto lease. (GE 3 at 6) Applicant leased a one-ton truck in 2007, when he joined the Army. In about 2009, shortly before the end of the lease, he was to deploy overseas, so he drove the vehicle from his west coast duty station to State 1 and put it into storage. He said he had storage insurance but not driving insurance. He left his father in charge of the vehicle. In about 2010, when he was arranging to return the vehicle at the end of the lease, Applicant learned from his father that his sister had driven the vehicle without permission and wrecked it. His father said he would pay to repair it but did not do so. When Applicant contacted the leasing company from Iraq to recover the vehicle, he said he was told they would contact him if there were any issues and never did so. He understood the vehicle would be picked up and taken to an auto dealer in State 1. He assumed that is what happened but never received documentation. (GE 1 at 37-38; GE 2 at 3; Answer; Tr. 23-24, 28-36, 41-51, 57, 68-72)

Applicant testified that it was his understanding that when representatives came to repossess the vehicle, they decided not to take it. He said his father told him the vehicle was no longer at the storage unit. He returned from Iraq in September 2010 to his west coast duty station. He assumed at that point that the vehicle had been picked up. He never saw the vehicle again and does not know where it is. In 2018, the recovery team came to his home to ensure that he did not have the vehicle. He has made numerous calls to the creditor's asset recovery unit to find out what happened with the vehicle. He acknowledged that he did not know the true cost of the damage to the vehicle after his sister wrecked it. At some point thereafter, the storage company went out of business. (Answer; Tr. 23-36, 46, 52-56, 68-72)

Applicant acknowledged that after returning home in 2010, he took no further action to confirm the status of the vehicle. In about 2018, the unresolved lease appeared on his credit report when he tried to buy a house. He said he initially was to owe about \$19,000, but when he called to make arrangements to pay, he was told that the full balance of the lease was owed (about \$39,000) apparently since the vehicle was never recovered. He believes he may have been protected from paying on the debt by the Servicemembers' Civil Relief Act (SCRA) when he was in the military, but acknowledged that, if so, that protection ended when he left the Army. (Answer; Tr. 23-24, 31-36, 56, 57-60, 63-64)

Applicant said once he learned that the debt remained unresolved in 2018, he contacted the creditor every six months or so. He disclosed the debt on his October 2019 SCA. (GE 1 at 38; Tr. 41) He e-mailed the creditor in early January 2022. The creditor responded that day and said they wanted to talk to him. Applicant wrote back in late March 2022, noting he had not heard from the creditor. He then e-mailed the creditor's CEO. The creditor responded three days later and said they were "researching your concern and will provide a timely response soon." (AE B; Tr. 23-27, 49, 61-62) No response was forthcoming. Applicant believes he is "getting the runaround." (Tr. 25-28) He said he intends to pay what he owes on the vehicle if that can be confirmed. (Tr. 36, 53, 66) He has not received a response confirming what he owes. (Tr. 67-68, 76-77) The debt does not appear on Applicant's more recent credit reports, from April 2022 and May 2023. (GE 4, GE 5)

Applicant said he is current on his taxes, has good credit, and has no other delinquent debts. (Tr. 66, 76, 83-84) His recent credit reports support this. (GE 4, GE 5) He is proud of his military service and his work and takes his security responsibilities seriously. (Tr. 22)

## **Policies**

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

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

## **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. 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. The following AGs are potentially applicable:

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

The two delinquent debts alleged in the SOR are established by the record evidence, including Applicant's admissions, credit reports, and testimony. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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, 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.

When he joined the military in 2007, Applicant leased a truck. When he deployed in 2009, he put the truck in storage in another state and left it in the care of his father. At some point thereafter, his sister drove the truck without permission and wrecked it. It is not entirely clear what happened next. Evidently the truck was returned to the storage unit. His father told him about the accident and promised to pay to fix it but did not do so. In 2010 or so, while still deployed, Applicant contacted the creditor to arrange return of the vehicle at the end of the lease, to a local dealer. Evidently, the creditor went to the storage unit to recover the truck, probably found that it was damaged, and did not take possession. It is unclear what happened to the truck after that. Applicant assumed the

matter had been resolved but did not pursue confirmation of the status of the truck from the creditor when he returned to his west coast duty station from Iraq, in September 2010.

Applicant thought little more about the matter until 2018, when the unresolved debt appeared on his credit report when he tried to buy a house. He began contacting the creditor to ascertain the status of the debt, without success. He provided e-mails from early 2022, after he received the SOR, documenting further efforts. He has heard little from the creditor and has not received documentation of what they believe he owes. He says he will pay what he owes if an amount is confirmed. SOR debt ¶ 1.a, now years old, remains charged off and unresolved, though it no longer appears on credit reports. Applicant has no other delinquent debt on recent credit reports.

SOR ¶ 1.b is paid and resolved. SOR ¶ 1.a, while large, is also isolated and very dated. The fact that it no longer appears on Applicant's credit reports does not preclude its consideration as a current security concern. It is also a continuing course of conduct, since it is not clearly established that it is resolved. While AG ¶ 20(a) therefore does not fully apply, the debt occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment

AG ¶ 20(b) also has some application. Applicant's financial woes began after his sister took his truck from storage without permission and wrecked it. This was a circumstance beyond his control. After he returned from Iraq in 2010, he did not verify the status of the truck with the creditor and did not confirm that his responsibility for the leased vehicle was concluded. The lease ended years ago, and the debt no longer appears on Applicant's credit report. His efforts to pursue resolution since 2018 have proven fruitless. Applicant's debts were incurred due to circumstances largely beyond his control. His debts are limited to this circumstance, and he has acted responsibly in addressing them, asserting his willingness to pay and resolve the debt. AG ¶¶ 20(b) and 20(d) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

- (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 Guideline F in my whole-person analysis. I considered Applicant's prior military service, status as a 100% disabled veteran, and the fact that the debt at issue is old, isolated, unusual, and unlikely to recur. I had the opportunity to observe Applicant's demeanor during the hearing and conclude that he testified credibly about the circumstances of the debt and his intentions to resolve it. Applicant is also gainfully employed and has a steady additional stream of compensation due to his disability. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant provided sufficient evidence to mitigate the financial 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Braden M. Murphy  
Administrative Judge