



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



In the matter of: )  
)  
) ISCR Case No. 21-02566  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 27, 2021, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective on June 8, 2017.

On March 23, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 19, 2023,

scheduling the hearing for July 5, 2023. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 6. Applicant testified and did not offer any documentary evidence. There were no objections to the Government's exhibits, and they were admitted in evidence. The record remained opened until July 26, 2023, to permit Applicant an opportunity to provide additional evidence. He provided documents that were marked Applicant Exhibits (AE) A through G. There were no objections to the exhibits. They were admitted in evidence and the record closed. DOHA received the hearing transcript on July 17, 2023.

### **Findings of Fact**

Applicant admitted all of the allegations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He has three previous marriages and married a fourth time in 2013. He has a grown child from a previous marriage. He has a stepchild and a biological child, who is 12 years old, from his current marriage. He earned a bachelor's degree in 2019. Applicant enlisted in the military in 1995 and retired honorably in the paygrade E-8 in 2017. While serving in the special forces, he completed multiple combat tours in Afghanistan and Iraq. He is a 100% disabled veteran. Applicant has been employed since 2017 by a federal contractor, with his income increasing incrementally since then. His wife is also employed by a federal contractor. (Tr. 20-32; AE A)

Shortly before Applicant retired, his now 12-year-old son was diagnosed with autism. At the time, Applicant was transitioning from the military, and his son was having difficulty in school. It was determined that the school he was attending was not beneficial for the special needs and therapy his son required. His son was doing poorly in his classes and stopped being verbal or going outside at recess. Applicant and his wife decided to move to a school district that had the necessary resources to help their son thrive. They found the right school district that had the structure he needed. Each level of school, elementary, middle, and high school were all located within a mile of each other which was helpful for access to the therapy he needed. The therapists that were part of the new school district were more readily available to address the special needs of Applicant's son. Since attending the school, his son has thrived and is achieving A/Bs on his report cards and has earned several belts in karate. (Tr. 32-35, 76-80, 82)

A farmhouse became available in the school district that Applicant wanted his son to attend. He and his wife chose to purchase the farm to ensure their son could go to the right school. Their purchase also allowed them to have animals, which has been therapeutic for their son. This farm was located in a place where members of the community have deep roots and purchasing a farm is not an opportunity that arises often. They did not want to miss the opportunity, so they purchased the farm. Because they purchased the farm before they could sell their house, Applicant experience financial difficulties. (Tr. 32-35, 38-39)

The house Applicant owned before purchasing the farm required major repairs and maintenance before he was able to sell it. It took approximately two years and \$20,000 to \$30,000 to make marketable. During this period, Applicant had two mortgages and was using credit cards to pay his expenses. He overextended his finances. He was able to finally sell the home in 2019. They broke even on the sale. Applicant admitted he was overextended with his finances. (Tr. 32-35, 38)

During this period, Applicant stepdaughter was attending college. Her mother paid most of her tuition, room and board, and expenses, but he would also contribute to her educational expenses. He also helped her financially when she moved to a new state for a job. (Tr. 35-36, 73-75)

In approximately 2018-2019, Applicant's father was diagnosed with cancer. He was able to complete the chemotherapy treatments but, in the summer of 2022, he had issues with his diabetes. He went into the hospital for what was to be routine surgery but experienced a fall and went into a coma. He did not recover and had to be removed from life support. During this time, Applicant visited his father, who lived in another state and helped his mother. He anticipates at some point in the future, his mother will need to move in with either him or his sister. He expects it to be him because he has children, and she will want to be closer to them. It is a difficult time for his mother, and he tries to help her manage her affairs. (Tr. 36-38, 60)

Applicant admitted that he should have acted sooner in resolving his delinquent debts. He understands the importance of being fiscally responsible. He was put on notice in April 2021 when he completed his background investigation that his finances were a security concern and again when he received the SOR in December 2021. Applicant began resolving his delinquent debts after he received the SOR. (Tr. 95-96; Answer to the SOR; AE A)

The SOR alleges eight delinquent debts totaling approximately \$43,973. Applicant provided evidence with his March 2023 answer to the SOR that he settled the credit card debt alleged in SOR ¶ 1.c (\$6,541) in July 2022. In August 2022, he paid in full the debt alleged in SOR ¶ 1.d (\$6,495). He provided supporting documentation that he paid in full the debts in SOR ¶¶ 1.e (\$6,148), 1.f (\$3,869), 1.g (\$1,719), and 1.h (\$206). Applicant also provided proof of payment for \$8,816 for a debt that was not alleged in the SOR. (Tr. 40-47, 53-54, 91-92; Answer to the SOR; GE 3, 6; AE F)

Applicant testified that the debts in SOR ¶¶ 1.a (\$12,148) and 1.b (\$6,847) are owed to the same creditor and he recently contacted it to resolve them. He credibly testified that he was paying his other debts and was tackling the smaller ones first. He was hesitant to negotiate a settlement for the debt in SOR ¶ 1.a because he believed if he settled the debt for less than the amount alleged it would be viewed negatively. Post-hearing, he provided proof that he reached a settlement agreement for both debts and paid the settlement amounts. (Tr. 47-52, 83-85; AE B, C, D, E)

Despite gaining ground on his financial issues, Applicant had other unexpected expenses, such as having to repair his truck that cost \$7,500 and replace the roof on his residence, which cost approximately \$25,000, thereby reducing his cash savings. He still maintained about \$11,000 in his checking account. (Tr. 50, 56, 58-59, 87-89)

Applicant readily admitted and took full responsibility for his financial shortcomings and failure to act more expeditiously. With the numerous life events occurring at the same time, he was overwhelmed with his financial responsibilities. He has not had financial counseling. He testified he served his country, often times in harms way and under combat conditions, and was willing to die for it. He loves his country. He is in a better financial position now. (Tr. 95-96; Answer to the SOR; AE A)

Applicant provided numerous character letters stating he is responsible, professional, energetic, trustworthy, mature, calm, confident, efficient, dedicated and charismatic. He adheres to procedures and protocols that protect the mission and some of our country's most sensitive operations. He has unquestionable character, work ethic and integrity. He is respected by his peers and is a leader, mentor, and coach. He has trained others on handling sensitive information. As noted by one former military commander, his duty performance was consistently among the very best during years of supporting truly no-fail missions. (Answer to the SOR; GE 2)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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 relating to the guideline 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had numerous delinquent debts that began accumulating in approximately 2018. There is sufficient evidence to support the application of the above disqualifying conditions.

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial issues to his son being diagnosed with autism and the school district where they lived not having the appropriate resources to help his son

reach his potential. He and his wife found a school district where their son's special needs were met. It was in a rural area where purchasing opportunities were infrequent. When a property became available, they chose to purchase a small farm where they could have animals, which would also help their son. Because of the expediency of their purchase, they needed time to prepare and repair their current home at the time for sale. During this period, they were overextended and incurred debts that became delinquent. In addition, Applicant's father fell and was in a coma. Applicant traveled to be with his mother. His father passed away, and he continued to help his mother, anticipating she will come to live with his family. Applicant acknowledged all of his delinquent debts and has systematically resolved each of those alleged in the SOR and others that were not alleged.

Applicant's debts occurred under unique circumstances that are unlikely to recur and do not cast doubts on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant made choices that were in the best interest of his son. His son is thriving now that he has the proper therapeutic care and is in the right environment. Applicant's choices placed him in financial difficulty. These choices were somewhat beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. The evidence supports that he fully paid or settled all of the SOR debts. He did not ignore his responsibility to address his delinquent debts. As he became more solvent he was able to pay his debts. AG ¶¶ 20(b) and 20(d) apply. There is no evidence he has participated in financial counseling, but the evidence supports his financial problems are under control. AG ¶ 20(c) therefore has some application.

### **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(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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I have considered Applicant's military service and multiple deployments in combat operations. I find Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant successfully mitigated the security concerns arising under Guideline F, financial considerations.

### **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.h: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge