



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01804
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
 For Applicant: *Pro se*  
 07/28/2023

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not begin to pay on two of his delinquent debts until after the SOR was issued. He did not make any payments on the other two delinquent debts. He did not take responsible action to address his financial obligations until his security clearance was in peril, and he still has unresolved delinquent debt. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 13, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The CAF took action 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 implemented by the DOD on June 8, 2017.

On December 22, 2022, Applicant responded to the SOR. He admitted all four alleged delinquent accounts, without any further explanation or documentation in support of mitigation or extenuation. He requested a determination on the written record, in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On February 14, 2023, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Items 1 through 6. Item 3 is the summary of an interview with an investigator from the Office of Personnel Management (OPM) conducted in March 2020. The FORM includes a notice to Applicant informing him of his opportunity to make any corrections, additions, deletions, and updates to the interview summary or to object to the admissibility of Item 3. The notice further informs Applicant that if he does not raise an objection or respond to the FORM, a DOHA administrative judge may determine that he has waived any objections to the admissibility of the summaries.

On February 20, 2023, Applicant received the FORM and its attachments. He timely submitted documentation I labeled as Applicant Exhibits (AE) A and B, there were no objections, and all proffered documents were admitted into evidence. The case was assigned to me on June 1, 2023. On July 17, 2023, I requested Department Counsel provide a current credit report, and I requested that Applicant provide evidence of his payments and other relevant documentation. I held the record open until July 24, 2023. Department Counsel submitted a credit report (Item 7) the same day as my request, and Applicant timely submitted documentation I labeled as AE C and D. There were no objections, and all proffered post-hearing documents were admitted into evidence. The record closed July 24, 2023.

### **Findings of Fact**

Applicant is 45 years old. He graduated from high school in June 1996. He enlisted in the U.S. Navy in 1996 and was honorably discharged in 2015. He married in 2019 and has no children. After separating from the Navy, Applicant worked for a government contractor from September 2017 to December 2020. Since January 2021, he has been employed by a different government contractor as a senior data link analyst. He has held a DOD security clearance since 2011.

The SOR alleges four delinquent accounts totaling \$20,719. In his Answer, Applicant admitted all four of the delinquent accounts. He provided no further information about the circumstances that triggered these delinquencies nor his efforts to resolve them. (Item 1)

During his November 19, 2021 background interview, Applicant discussed the four delinquent accounts listed in the SOR. He did not list them on his September 2021 security clearance application, as required, due to oversight. He explained that these accounts became delinquent for several reasons: he had forgotten about paying them; he had not received any statements; he was immature; he was unmotivated to pay; he had used credit cards to pay for his wedding and honeymoon; financially he "was in over his head"; he had other bills that took priority; and he had insufficient income to pay off these accounts. He told the investigator that he recently received a raise at work and planned to use the additional income to pay these four delinquent accounts. (Item 3)

The DOD CAF sent an interrogatory to Applicant in June 2022. He was asked about the four delinquent accounts, which he claimed he was repaying, but he did not attach supporting documentation. He also provided a July 2022 personal financial statement that showed his monthly net income as \$3,700. After paying his monthly expenses, to include payments on the four delinquent accounts, he had a monthly net remainder of \$1,000. He also provided a copy of his bi-weekly paystub. According to this information, it appears his monthly net income should reflect \$6,894. In this scenario, after paying his monthly expenses, to include listed payments on the four SOR delinquent debts, his monthly net remainder was over \$4,500. (Item 4)

SOR ¶ 1.a alleges that Applicant is indebted to a federal credit union in the approximate amounts of \$14,337, for a charged-off account that became delinquent in 2019. In his July 2022 PFS, he listed that he was making monthly payments of \$200 on this account, however, the July 2023 credit report shows that this account had not received payments and remains unpaid in the amount of \$14,337. Applicant has not provided sufficient documentation to show the current status of this account or what efforts, if any, he is making to pay this account. This debt remains unresolved. (Item 1, Item 4, Item 5, Item 6, Item 7)

SOR ¶ 1.b alleges that Applicant is indebted to a federal credit union in the approximate amount of \$5,627, for a charged-off account that became delinquent in 2019. In his July 2022 PFS, he listed that he was making monthly payments of \$100 on this account, however, the December 2022 repayment agreement showed that he had not made any payments on the account until December 2022. Since that time, Applicant has made monthly payments in accordance with the repayment agreement through July 2023. This debt is being resolved. (Item 1, Item 4, Item 5, Item 6, Item 7; AE A, AE C)

SOR ¶ 1.c alleges that Applicant is indebted to a federal credit union in the approximate amount of \$500, for a charged-off account that became delinquent in 2019. In his July 2022 PFS, he listed that he was making monthly payments of \$50 on this account, however, the December 2022 repayment agreement showed that he had not made any payments on the account until December 2022. Since that time, Applicant has made monthly payments in accordance with the repayment agreement through July 2023. This debt is being resolved. (Item 1, Item 4, Item 5, Item 6, Item 7; AE B, AE D)

SOR ¶ 1.d alleges that Applicant is indebted to a collection agency in the approximate amount of \$255 for an account referred for collection in 2018 by a bank. He has not provided sufficient documentation to show the current status of this account or what efforts, if any, he is making to pay this account. This debt remains unresolved. (Item 1, Item 4, Item 5, Item 6)

## **Policies**

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 Government and the record established that Applicant has four delinquent accounts totaling approximately \$20,719. AG ¶¶ 19(a) (inability to satisfy debts) and 19(c) (a history of not meeting financial obligations) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

(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.

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Although Applicant's delinquencies arose several years ago, they have persisted with little evidence of debt-resolution efforts by him, even though he had the financial resources to do so. An individual entrusted to safeguard sensitive and classified information is expected to act in a financially responsible manner. During his November 2021 security interview, Applicant acknowledged his financial delinquencies and expressed his intent to make payment arrangements to resolve his debts; however, there is no evidence that he followed through on his stated intent. Also contributing to my assessment of Applicant's intent and credibility is the fact that he claimed he was making monthly payments to his delinquent creditors on his July 2022 PFS, however, the record evidence showed that this was not the case. It was only after the SOR was issued in December 2022 when Applicant finally took action to begin resolving two out of the four SOR debts. Although he made a step in the right direction, his timing of establishing a

repayment plan in December 2022 does not result in his receipt of full credit for mitigation under AG ¶ 20(d).

It is well-established that the timing of debt payments is a relevant consideration in evaluating whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. To receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts.” Directive, Encl. 2, App. A ¶ 20(d). The Appeal Board has consistently held that a “good-faith effort” generally requires that an applicant has established a meaningful financial track record of payments, to include evidence of actual debt reduction. *See, e.g.*, ISCR Case 05-01920 at 5 (App. Bd. Mar. 1, 2007). Promises of future repayment are not a substitute for a history of payment. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). Moreover, an applicant who begins to resolve security concerns only after having been placed on notice that his clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his personal interests are not threatened. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018). Given the facts that Applicant had made no payments to his four delinquent creditors, as promised during his November 2021 background interview, or made monthly payments as claimed on his July 2021 PFS, I find that his finances continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations 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 Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant stated during his November 2021 background interview that his financial problems could be attributed to him being immature and unmotivated, he forgot to make payments because he did not receive billing statements, and he used credit cards to finance his wedding and honeymoon, which caused him to become delinquent on his accounts. He reported to the authorized DOD investigator that he had received a raise at work and intended to resolve these outstanding accounts. Although Applicant expressed his intent to initiate debt-resolution efforts, there is no evidence that he has acted upon his stated intent until the SOR was issued in December 2022. He failed to establish that he acted responsibly under the circumstances after his PFS showed he had sufficient income to establish payment plans and resolve his delinquent debts. Repaying these creditors was not a priority until Applicant's security clearance was in peril. Given the entirety of the record evidence, I conclude that Applicant did not mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Applicant setting up repayment plans and making payments in accordance with the plans is a positive step. Under his current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

### **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

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge