



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02637
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

08/30/2023

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On February 13, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on February 21, 2023, and requested a hearing before an administrative judge.

The case was assigned to me on August 4, 2023. The hearing was convened as scheduled on August 14, 2023. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence beyond what he attached to his response to the SOR.

## Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. He has worked for his current employer since about April 2023. He earned a bachelor's degree in 2021. He is married with two children. (Tr. at 20-26; Applicant's response to SOR; GE 1, 2)

Applicant served on active duty in the U.S. military from 2001 until he was honorably discharged for medical reasons in 2017. He deployed to Iraq and Afghanistan while on active duty. He received separation pay of about \$121,000. The Department of Veterans Affairs (VA) gave him a disability rating of 50%, which equated to tax-free payments of about \$1,250 a month. The VA increased the disability rating to 100% in about December 2022, which raised the monthly payments to about \$4,000 a month. (Tr. at 17-19, 22, 25, 33, 44-45; Applicant's response to SOR; GE 1, 2)

Applicant has a history of buying and selling vehicles, and sometimes turning them back as a voluntary repossession. In about 2012, he voluntarily surrendered the car that was driven by his wife after she lost her job. A credit report from August 2019 listed the account as opened in November 2012 with a high credit of \$45,463. The creditor charged off \$20,616 in about May 2013 (SOR ¶ 1.c). Applicant has not made any payments on the deficiency balance owed on the loan. (Tr. at 14, 29-30, 35-39; Applicant's response to SOR; GE 1-5)

Applicant purchased and financed vehicles in about September 2016 and March 2017. When he learned he was being discharged from the military, he decided to voluntarily surrender both vehicles, buy a new home, and use the money that would have gone to the vehicle loans to pay the mortgage for the new home. The February 2023 credit report lists the two accounts as charged off, with balances of \$40,658 (SOR ¶ 1.a) and \$21,986 (SOR ¶ 1.b). (Tr. at 17-18, 31-34, 37; Applicant's response to SOR; GE 1-5)

Applicant attended college after his discharge. In addition to his separation pay, he lived off his VA disability pay, the GI Bill, and his wife's limited income. He worked for about ten months in 2020, but his employment has been sporadic. A security clearance will greatly increase his economic opportunities. (Tr. at 15, 20-25, 42-44; Applicant's response to SOR; GE 1, 2)

Applicant has not paid any of the vehicle accounts, and he does not intend to. He sees no financial value in paying for vehicles he does not possess. The mortgage account on the house he bought in 2017 is listed on the August 2019 credit report with a high credit of \$212,798 and a balance of \$204,843. He refinanced the mortgage with the same financial institution in March 2022. The February 2023 credit report shows a final payment on the original mortgage loan of \$192,525. That report lists the new mortgage loan with a high credit of \$288,000, with monthly payments of \$1,384, and a balance of \$283,315. (Tr. at 30-31, 34, 38-41, 45; Applicant's response to SOR; GE 3, 4)

Applicant bought a vehicle financed through a loan of about \$56,321 in July 2021. He owed about \$53,935 when he paid the loan off in March 2022 from the

proceeds of his refinanced mortgage loan. He purchased another vehicle in about August 2022 financed through a loan of about \$36,697. He traded that vehicle in and purchased another vehicle in about April 2023. (Tr. at 38-40; Applicant's response to SOR; GE 4, 5)

### **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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of defaulted auto loans, vehicle repossessions, and unpaid deficiency balances on those loans. The evidence indicates that it was initially difficult for him to pay his auto loans, but at some point, he just chose not to pay the deficiency balances. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

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;

(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 the 2012 repossession to his wife losing her job. He never paid the deficiency balance due on the loan, but that debt is so old that it no longer has any independent security significance. SOR ¶ 1.c is mitigated.

In anticipation of his discharge from the military, Applicant decided to voluntarily surrender both of his vehicles, buy a new home, and use the money that would have gone to the vehicle loans to pay the mortgage for a new home. He chose to attend college and not use any of his separation pay on the vehicle loans. His discharge was beyond his control. His decisions before and after his discharge were within his control. The real issue is what he did when he had additional money. He bought a vehicle financed through a loan of about \$56,321 in July 2021. He could have used some of the proceeds from his refinanced mortgage loan to pay, partially pay, or settle the deficiency balances. Instead, he used the proceeds in about March 2022 to pay off about \$53,935 owed on a loan for the car he purchased the year before.

Applicant has not paid any of the vehicle accounts, and he does not intend to. He sees no financial value in paying for vehicles he does not possess. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues continue to cast doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

### **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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

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 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.b:	Against Applicant
Subparagraph 1.c:	For 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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Edward W. Loughran  
Administrative Judge