



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



In the matter of: )  
)  
) ISCR Case No. 22-00867  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

September 11, 2023

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On June 4, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On June 8, 2022, the Department of Defense Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

In an undated response, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 21, 2022, was provided to him by letter dated September 22, 2022, which he received on September 29, 2022. Department Counsel attached as evidence to the FORM Items 1 through 10. Applicant was afforded

a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence within the 30-day period after receiving the FORM. On January 19, 2023, the case was assigned to another administrative judge; and on May 24, 2023, the case was reassigned to me. I received Items 1 through 10 into evidence.

## **Findings of Fact**

### **Background Information**

Applicant is a 58-year-old analyst who has been intermittently employed by a defense contractor since July 2016. He was unemployed from December 2019 until he was interviewed by an Office of Personnel Management (OPM) investigator in July 2021. The FORM does not contain any information regarding his current employment status. (Items 3, 7) He seeks a clearance in conjunction with his current employment. He has previous clearance history as a result of his military service, discussed below. (Item 7)

Applicant was awarded an associate degree in June 1994 and was awarded a bachelor's degree in August 1996. (Items 3, 7) Applicant was married from April 1996 to July 2008. That marriage ended by divorce. He has two adult children, ages 34 and 25. Applicant indicated that he has been residing with a cohabitant since November 2015. (Items 3, 7)

Applicant served in the U.S. Army and Army National Guard (ANG) as both an enlisted soldier and officer from 1983 until his retirement in 2015. Because of his service on active duty, Applicant became eligible for an early ANG retirement in June 2019 and receives approximately \$4,093 per month. (Items 7, 10)

### **Financial Considerations**

Applicant's eight delinquent SOR debts, totaling approximately \$68,644, are established by his June 4, 2021 SF-86; his February 4, 2020 and July 13, 2021 OPM interviews; his October 5, 2021 DOHA Interrogatory responses; his July 2, 2021, March 9, 2022, and September 19, 2022 credit reports; his child support/divorce records; and his undated SOR Answer. (SOR ¶¶ 1.a through 1.h; Items 1-10) In his SOR Answer, Applicant admitted each allegation.

Although not his largest debt, Applicant's \$10,000 child support arrearage in SOR ¶ 1.h presents as the most troubling. In February 2013, Applicant's former spouse obtained a \$7,651 child support judgment of delinquency against him. (Item 8) By June 4, 2021, the size of the arrearage had increased to at least \$10,000. (Item 3) In his SF-86, Applicant described this debt as alimony, and he later explained in his February 4, 2020 OPM interview that this debt was actually for child support. (Item 10) He added during that interview that he owed about \$17,000 in back child support and acknowledged that he had not made any payments since the 2015 to 2016 timeframe. (Item 10)

In his October 5, 2021 DOHA interrogatory responses, Applicant stated that he had about \$94,000 in debt and attributed periods of unemployment after leaving active duty in late 2014 for his financial situation. (Item 7) He also admitted that he had not paid any of the nine debts listed in the Interrogatory, nor had he made payment arrangements or made any payments. (Item 7) Eight of those debts are listed on his SOR. (Items 1, 7)

As the above summary indicates, Applicant has incurred a substantial amount of unresolved debt. Furthermore, he did not submit evidence that he resolved any of these debts, that he remained in contact with his creditors during his periods of delinquency, or that he received financial counseling.

### **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 AG ¶ 2, describing 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 clearance 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial considerations:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” and “(c) a history of not meeting financial obligations.” The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists potential mitigating conditions:

(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;

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Apart from AG ¶ 20(b), none of the mitigating conditions apply. However, full credit under that mitigating condition is not warranted given the fact that Applicant failed to act responsibly and neglected to remain in contact with his creditors during his periods of unemployment. The evidence does not support application of any of the other potential mitigating conditions. Applicant's financial delinquencies are ongoing, and he has not established that his debts are being resolved or are under control. Nor did he document that any of the SOR debts are not his responsibility.

### **Whole-Person Concept**

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the

majority of his adult life, is receiving military retirement pay, and is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting that his long-standing financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

Applicant chose to rely on the written record. In so doing, however, he did not submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his outstanding delinquent debt. Because he failed to provide such information and relied on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

### **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.h: Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. National security eligibility for access to classified information is denied.

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ROBERT TUIDER  
Administrative Judge