



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02528
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

09/13/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant incurred delinquent debts during periods of employment instability. While he admitted all the debts in the Statement of Reasons, he challenges the validity of most of them. Applicant did not provide any documentation of his efforts to pay, challenge, or otherwise resolve his debts, from which to conclude that his positions are reasonable. He did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 17, 2022. On March 2, 2023, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 21, 2023, and elected a decision by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On April 11, 2023, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. DOHA mailed the FORM to Applicant the same day, and he received it on May 9, 2023. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM.

The case was assigned to me on August 29, 2023. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Government Items 3 through 8 are admitted into evidence without objection.

### **Findings of Fact**

In his response to the SOR, Applicant admitted all of the debts alleged in the SOR (¶¶ 1.a through 1.m), with narrative explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 59 years old. He is married with three adult children. He was employed in the information technology (IT) field as a systems administrator and security engineer with several employers from 2012 until August 2019, when he was unemployed for about three or four months. He was again employed from December 2019 until September 2021, including a six-month contract with a local city. When that contract ended, he had surgery, and was then unemployed until June 2022. Since then, he has been employed with a defense contractor, his sponsor for a clearance. (Item 3)

Applicant noted on his June 2022 SCA that he had applied for a clearance previously for work with other U.S. Government departments, outside of DOD. (Item 3 at 32). He also disclosed numerous delinquent debts and explained that they were due to multiple employment furloughs in 2019 as well as his 2021 surgery and recovery time. (Item 3 at 33-40) Applicant also discussed his debts in a September 2022 background interview. (Item 7) (The record also includes the summary of a background interview from June 2017, probably connected to an earlier SCA that is not in the record.) (Item 8)

After he reentered the workforce in 2020, Applicant retained a credit counselor to assist with his debt resolution, but his later unemployment impacted these efforts. (Item 7) He explained in his answer that he is willing to pay the original creditors for many of his debts but does not want to deal with collection agencies without verification that the debts are valid. He also asserts that debts that have been "charged off" are therefore uncollectible since they are "satisfied." (Answer, Item 2) He provided no documentation

with his Answer regarding his efforts to address, pay, settle, resolve, or dispute any of the debts alleged in the SOR.

The SOR details 13 delinquent debts, totaling about \$44,000. The debts are established by Applicant's admissions and by the credit bureau reports (CBRs) in the record from July 2022 and February 2023. (Items 5 and 6). A CBR from June 2016 (Item 6) is also included. The SOR debts are detailed as follows:

SOR ¶¶ 1.a (\$623) and 1.m (\$774) are medical debts that have been placed for collection. (Item 5) Applicant admits the debt but says attempts to validate them went unanswered by the debt collectors. He believes that medical debts should not be listed on a credit report. (Item 2) They are unresolved.

SOR ¶¶ 1.b (\$1,181) and 1.j (\$1,854) are accounts with bank C that have been charged off. (Items 5, 6) Applicant asserts that the debts, having been charged off, have been "designated as income." He provides no documentation to show this. He says he is seeking to remove the debts from his credit report under the Fair Credit Reporting Act (FCRA). (Item 2) They are unresolved.

SOR ¶ 1.c (\$1,986) is an account with a bank that has been placed for collection. (Items 5, 6) Applicant admits the debt and says he has "no issue" resolving the debt with the original creditor but will not make payments to a collection agency without verification that the debt is valid. He says he is seeking to remove the debts from his credit report under the FCRA. (Item 2) The debt is unresolved.

SOR ¶¶ 1.d (\$721) and 1.e (\$803) are debts to Bank S placed for collection with collection agency M. (Items 5, 6) Applicant admits the debts and says he has "no issue" resolving them with the original creditor but will not make payments to a collection agency without verification that the debts are valid. He says he is seeking to remove the debts from his credit report under the FCRA. (Item 2) The debts are unresolved.

SOR ¶ 1.f (\$13,965) is an account with a bank that has been charged off. (Item 5) Applicant asserts that the debt, having been charged off, has been "designated as income." He provides no documentation to show this. He says he is seeking to remove the debt from his credit report under the FCRA. (Item 2) The debt is unresolved.

SOR ¶ 1.g (\$7,719) is an account with a bank that has been placed for collection. (Item 5) Applicant admits the debt and says he has "no issue" resolving the debt with the original creditor but will not make payments to a collection agency without verification that the debt is valid. He says he is seeking to remove the debt from his credit report under the FCRA. (Item 2) The debt is unresolved.

SOR ¶ 1.h (\$6,489) is a debt to Bank S placed with collection agency P. (Item 5) Applicant admits the debt and says he has "no issue" resolving the debt with the original creditor but will not make payments to a collection agency without verification that the

debt is valid. He says he is seeking to remove the debt from his credit report under the FCRA. (Item 2) The debt is unresolved.

SOR ¶ 1.i (\$5,563) is also a debt to Bank S placed with collection agency P. (Item 5) Applicant says that the account is the subject of a court hearing that is currently scheduled and he “will abide by the court decision.” (Item 2) Applicant provided no updated information or documents. The debt is unresolved.

SOR ¶ 1.k (\$1,538) is a credit account that has been charged off. (Item 5) Applicant asserts that the debt, having been charged off, has been “designated as income.” He provides no documentation to show this. He says he is seeking to remove the debt from his credit report under the FCRA. (Item 2) The debt is unresolved.

SOR ¶ 1.l (\$868) is an account with a bank that has been charged off. (Item 5) Applicant asserts that the debt, having been charged off, has been “designated as income.” He provides no documentation to show this. He says he is seeking to remove the debt from his credit report under the FCRA. (Item 2) The debt is unresolved.

Applicant provided no documentation to support his assertions about his efforts to address his debts responsibly. As Department Counsel notes in the FORM, Applicant drives a \$60,000 luxury car, purchased in August 2022. (Item 4 at 4) While the account is current, it suggests that he is not addressing his delinquent debts responsibly and has chosen instead to incur more debts.

The record did not indicate that he participated in more recent credit counseling through the debt relief company, or otherwise. He also provided no details about his current assets, employment situation, or income stream, to determine the reasonableness of his efforts to resolve his debts.

### **Policies**

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

The adjudicative 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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; and
  
- (c) a history of not meeting financial obligations.

Applicant incurred numerous debts in recent years, related to employment instability including multiple job furloughs as well as medical surgery. The debts are established by the credit reports in the record, and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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, or 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.

Applicant's debts are ongoing and unresolved. They continue to cast doubt on his current reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant stated that his delinquent debts began with his job furloughs in 2019. He then retained a debt counselor but his efforts to address his debts were derailed by his 2021 job loss and surgery. These are circumstances beyond his control, and he initially appears to have tried to address them responsibly. AG ¶ 20(b) therefore has some application. However, his efforts have not continued, and he did not establish sufficient evidence that he has acted responsibly or in good faith in addressing his numerous delinquent debts.

AG ¶ 20(e) does not apply. Applicant challenges his responsibility for certain debts because they have been charged off or placed for collection with a collection agency who

he says is unable to confirm validity of the debt. He did not establish a reasonable basis for his belief, nor did he provide any supporting documentation.

Applicant's assertions that certain debts are "satisfied" because they have been charged off are misplaced. A delinquent debt is not considered mitigated because the creditor has charged off the account. The creditor's choice to charge off the debt for accounting purposes does not affect the debtor's obligations to the creditor. ISCR Case No. 09-01175 at 2 and fn. 1. (App. Bd. May 11, 2010). While several debts may now be charged off, this does not excuse Applicant from making reasonable efforts to resolve them since he does not dispute that they are his. He did not provide sufficient evidence that he did so.

Several of Applicant's SOR debts have been dropped from his credit report under the Fair Credit Reporting Act. However, that "is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The FCRA requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. However, this does not establish that the debts are resolved, nor does it mitigate the security significance of the debts.

Applicant did not establish that AG ¶ 20(b) should fully apply because he has not shown that his actions are reasonable. He did not establish that he has undertaken a good-faith effort to resolve his debts, for instance by establishing a track record of steady payments towards his creditors, or otherwise. He did not establish that AG ¶ 20(d) should apply. AG ¶ 20(c) does not fully apply, as Applicant did not show that he has participated in recent credit counseling or that his debts are being resolved or are under control.

### **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(a), 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. Given the limited documentation in this case, Applicant did not provide sufficient evidence to mitigate his delinquent debts, even if they occurred due to employment instability and medical issues. Since Applicant requested a decision on the written record, I did not have the opportunity to question him in a hearing about the status of his SOR debts, to better assess the reasonableness of his actions in addressing them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. This does not mean that Applicant cannot establish at a later date that he is taking reasonable steps to resolve his debts, but at this time, he has not shown that he has done enough to mitigate the security concerns arising under Guideline F, financial considerations due to his delinquent debts.

### **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.m:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge