



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01736
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro Se*

09/11/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 15, 2022, the Department of Defense (DOD) 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 within the DOD on June 8, 2017.

Applicant answered the SOR on August 17, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 19, 2023, scheduling the hearing for August 14, 2023. I convened the hearing as scheduled.

The Government offered exhibits (GE) 1 through 4. There were no objections, and the exhibits were admitted in evidence. Applicant did not offer any documentary evidence. The record was held open until September 5, 2023, to permit Applicant an opportunity to provide documents. He did not submit any documents, and the record closed. DOHA received the hearing transcript (Tr.) on August 25, 2023.

### **Findings of Fact**

Applicant admitted all the allegations in SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 61 years old. He is twice divorced and married for the third time in 2003. He has two grown children from his previous marriages and a grown stepchild. He served in the military from 1986 to 2010 and retired honorably in the paygrade E-7. He receives monthly retirement income after taxes of \$2,223 and U.S. Department of Veterans Affairs (VA) monthly disability payments of \$1,932. He has worked for federal contractors from April 2012 to October 2017. He was unemployed for one month before starting work for his present employer in December 2017. His annual salary is approximately \$47,000. (Tr. 13-19; GE 1)

The SOR alleges 16 delinquent debts totaling approximately \$24,444. Applicant testified that approximately six to seven years ago, his daughter had financial difficulties and was unable to pay her mortgage. Applicant paid her mortgage and stopped paying his accounts, which then became delinquent. He said he tried to make some payments on the accounts and thought he could catch up, but he got deeper in debt. His daughter eventually sold her house. Applicant does not know if she made a profit. She has not reimbursed him. He said he was unaware his accounts were in a delinquent status until he received the SOR. He admitted he should have been proactive in resolving them and did not begin to address them until after he received the SOR. He testified that he was not paying attention to his debts like he should have been. (Tr. 21-23, 51-54, 61)

In August 2020, Applicant completed a security clearance application (SCA). In response to questions about his finances, he disclosed he had one delinquent debt (SOR ¶ 1.g- \$1,147). He said it would be paid by December 2020. He did not disclose any other delinquent debts. He testified that he was unaware he had other delinquent debts until he received the SOR. (Tr. 54-55; GE 1)

The SOR debts are corroborated by Applicant's admissions in his answer and testimony, and credit reports from October 2020, May 2021, and August 2023. (GE 1, 2, 3, 4)

Applicant testified that prior to receiving the SOR, he began making online payments of \$100 and \$60 towards the accounts alleged in SOR ¶ 1.a (\$3,790) and 1.b (\$3,546) owed to MD, the same collection creditor. These were credit card accounts. He testified that he would provide proof of the payments he made and when they began. He did not. (Tr. 21-24, 39-42, 56-57; GE 2, 3, 4)

Applicant testified that after receiving the SOR, he contracted with a debt solution company (DSC) in June 2022 to help him settle and pay his delinquent accounts. He testified that all the debts in the SOR except the three owed in ¶¶ 1.a, 1.b and 1.k, for \$431 to the same collection creditor, were the only debts not included in the agreement. Applicant began making monthly payments of \$235 to DSC. After he made six consecutive payments in January 2023, DSC offered to arrange a loan of approximately \$10,000 through "OL" (apparently a loan company associated with DSC) and then use that \$10,000 to settle his outstanding debts. Applicant would then be required to make monthly payments of \$325 to repay OL. He said there is no interest rate on the loan but rather he pays a fee based on the amount of each debt that is resolved. (Tr. 19-20, 25-31, 34-51; GE 4)

Applicant stated that he tried to include the MD debts in the plan, but MD would not accept an agreement to settle their accounts through DSC. MD wanted to view Applicant's pay stubs for the past two years. MD refused to negotiate a settlement agreement with OL. Applicant stated that because the amount of the loan through OL was based on all his delinquent debts, DSC repaid OL about \$6,000 that it had anticipated using to settle the accounts with MD. Applicant's loan from OL is listed on his most recent credit report. It reflects a balance of \$10,882 and consistent monthly payments of \$325. It is unclear if DSC made the reimbursement to OL, as the balance does not reflect a lesser amount. Applicant has not made any payments on the MD accounts since he began working with DSC. He further stated that since July 2023, DSC services have been terminated because his debts were paid. (Tr. 24-51; GE 4)

Applicant testified that all the delinquent debts alleged in the SOR, except those to MD, are paid. He said he has a meeting scheduled for November 2023 with MD to discuss settlement of the three MD debts. The date of the meeting was scheduled by MD. He is not currently making any payments to MD. When asked if he had money available to offer a settlement to MD on the delinquent debts, he said he did not. (Tr. 24-27, 56-58)

Applicant stated that the debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, 1.f., 1.g, 1.i, 1.l, 1.m, 1.n and 1.p were all paid through DSC. The debt in SOR ¶ 1.h (\$756) is a medical bill that Applicant said was paid for by the VA after some confusion. He said he had the supporting documentation and was going to provide it to show that it was resolved. He did not. Applicant testified that the debt alleged in SOR ¶ 1.i (\$702) is a cable bill. He obtained cable services for someone, and that person paid the debt. Applicant was to provide proof of the payment but did not. Applicant's 2023 credit report shows that the debts in SOR ¶¶ 1.c (\$2,049) and 1.o (\$893) were resolved in January 2023 and November 2018, respectively. (Tr. 59-71; GE 4)

Applicant was asked about a delinquent debt for \$19,872 on his most recent credit report. This debt is not alleged in the SOR. He explained that he obtained a loan to pay a student loan in his mother's name that was obtained for him sometime in the early 1980s. He obtained the loan in March 2022 and was to pay \$525 a month. He arranged for the amount to be automatically withdrawn from his account. He testified he contacted the creditor to change the date that the money would be withdrawn, and the transaction

did not happen as planned. He made payments and his last was January 2023. He said he contacted the creditor in June or July 2023 and tried to fix the problem. When asked if he had saved the payments that were due so he could bring the account current, he said he did not save the money and does not have it to pay the delinquent amount. He intends to fix the issue but has not yet done so. (Tr. 71- 79; GE 4)

Applicant was asked about his current finances. He stated he did not have any money in his checking or savings account. He has about \$30,000 in a retirement account. He has about \$1,200 to \$1,600 of expendable income at the end of the month. Occasionally, he will help his daughters out financially if they request it. He spends some of his money on his grandchildren. Applicant takes full responsibility for not using good judgment in addressing his delinquent debts. He stated that he will make it right. He has not participated in financial counseling. (Tr. 81-83)

The record was held open for Applicant to provide documents to substantiate that he has resolved the delinquent debts alleged in the SOR and through DSC. He did not provide any documents to show he resolved most of the debts. Many of the debts alleged do not appear in Applicant's August 2023 credit report. It is unknown if they are not reported because they fell off due to the statute of limitations or have been resolved. Applicant does not have a plan in place for resolving the debts owed to MD. (GE 4)

Applicant was asked if he had timely filed his tax returns for the past three years. He stated he did not know because that is something his wife handles. He and his wife live in different locations. He said they usually owe taxes. He was told to provide proof that the taxes were timely filed. He did not. (Tr. 84-86)

Any derogatory issues that were not alleged in the SOR will not be considered for disqualifying purposes but may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

## **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 is potentially applicable:

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

Applicant has numerous delinquent debts for which he failed to take timely action that remain unresolved. 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.

Approximately six to seven years ago, Applicant made a decision to pay his daughter's mortgage and not to pay his own debts. He was aware he had stopped making payments but said he was unaware of the severity of his financial problems until he received the SOR. He has numerous delinquent accounts that are in collection. After receiving the SOR in May 2022, Applicant hired DCS to help him negotiate settlement agreements and resolve some of his delinquent accounts. He testified that most of his delinquent debts are paid. He did not provide documentary proof to substantiate that he has paid most of his delinquent debts. Three accounts owed to MD were not settled and Applicant has a meeting with them in November 2023 to make payment arrangements. Applicant's financial problems are recent and numerous. I cannot find they are unlikely to recur. Even if his other debts are paid, he still has three totaling approximately \$7,767 remaining to be paid. He will not begin to address these debts until November 2023 and testified he does not currently have the resources to pay them.

Applicant's financial problems were within his control when he chose to stop paying his debts about six to seven years ago and used his money to pay his daughter's debts. He failed to address his delinquent accounts until June 2022, after receiving the SOR. He did not provide evidence that he has had financial counseling. I find AG ¶¶ 20(b) and 20(c) do not apply.

Applicant testified that he resolved the majority of his delinquent debts through DCS but failed to provide any documentary evidence to substantiate his statement. His credit report shows two debts (SOR ¶¶ 1.c and 1.o) were paid. AG ¶ 20(d) applies to these paid debts. Applicant has other delinquent debts that were not included with his DCS plan that are not resolved. He has not saved money to resolve these debts and does not meet with the creditor until November 2023. Although it is not a requirement that all his delinquent debts need to be satisfied before eligibility for a security clearance is granted, I am not confident based on Applicant's past financial track record that future financial problems are unlikely to recur. I find AG ¶ 20(a) does not apply.

### **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 those Guidelines, but some warrant additional comment.

I considered Applicant's military service and VA disability. Applicant's failure to address his delinquent debts until after he received the SOR, securing a new loan (over \$19,000) to pay student loans and then defaulting on the loan, not having saved money to settle the remaining SOR debts, and failing to provide proof that he resolved his other debts, does not reflect a stable financial track record. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.n:	Against Applicant
Subparagraph: 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge