



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00988
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro Se*

09/21/2023

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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 June 27, 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.

In Applicant's undated answer to the SOR, 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 on July 26, 2023, scheduling the hearing for August 28, 2023. I convened the hearing as scheduled. The Government offered

exhibits (GE) 1 through 5. There were no objections, and the exhibits were admitted in evidence. Applicant testified, and he did not offer any exhibits. The record was held open until September 7, 2023, to permit Applicant an opportunity to provide documents he wanted considered. None were provided and the record closed. DOHA received the hearing transcript (Tr.) on September 12, 2023.

### **Findings of Fact**

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

Applicant is 39 years old. He earned a bachelor's degree in 2009. He served in the military from 2015 to 2018 and received an honorable discharge due to medical conditions in the paygrade of E-4. He has a 90% disability rating from the Department of Veterans Affairs (VA) and receives about \$2,500 a month in disability payments. He married in 2006 and divorced in 2017. He has two children from the marriage, ages 16 and 13. He pays about \$700 a month for child support. He stated he had a short period of unemployment after he was discharged from the military but otherwise, he has had no other recent periods of unemployment. He earns an hourly wage and estimates his annual income to be approximately \$75,000. (Tr. 19-24)

The SOR alleges Applicant failed to timely file his 2018 and 2019 federal and state income tax returns (§§ 1.a and 1.b). His returns were filed late. Tax transcripts were included in his response to government interrogatories and reflect his 2018 federal income tax return was filed in November 2020 and his 2019 federal income tax return was filed in October 2020. The transcripts do not reflect an extension was filed. He testified that his delinquent income tax returns are all filed. He did not provide proof that his state income tax returns for these years were filed, but I believe he resolved them at the same time he did his federal tax returns. He testified he has no outstanding tax balance. No explanation was provided for why he filed his income tax returns late. (Tr. 34-36; GE 2)

The SOR alleges Applicant has 14 delinquent student loans that are in collection or charged off and total approximately \$92,044 (§§ 1.c, 1.d, 1.f - 1.k, 1.n, 1.o, 1.r, 1.u, 1.z, and 1.aa). He has ten delinquent consumer debts that are charged off or in collection totaling approximately \$30,845 (§§ 1.e, 1.l, 1.m, 1.p, 1.q, 1.s, 1.t, 1.v, 1.y, 1.bb). These debts include a credit card that he used to fund a vacation in 2016 for his family that cost about \$10,000 (SOR § 1.e balance - \$15,232). He testified he was trying to save his marriage and was hoping a family vacation would help. Another delinquent debt is for a dog he purchased for a significant other who had medical issues. The balance owed is \$1,179 (SOR § 1.t) Another delinquent account is owed to a jewelry store for items he purchased for family members (§ 1.p - \$1,480) He also has two medical debts that are in collection totaling \$302 (§§ 1.w and 1.x). Applicant has made no effort to contact the creditors or attempt to resolve the debts. All of the debts are corroborated by Applicant's admissions in the SOR, statements made to the government investigator that Applicant

authenticated, testimony during his hearing, and credit reports from June 2020, February 2021, and August 2023. (Tr. 46-55; GE 1, 2, 3, 4, 5)

Applicant did not disclose any delinquent debts, charged off accounts, or accounts in collection on his security clearance application (SCA) completed in March 2020. He testified it was an oversight and was a mistake. Applicant's testimony was not credible, evasive, and lacked candor. (Tr. 40-43)

Applicant was interviewed by a government investigator in August 2020. He was confronted with all of his unpaid student loans and other delinquent debts. He told the investigator he has never been financially stable and since getting a steady job in September 2018 he thought about repairing his credit but had not taken action until June 2020 when he began to research the best way to get out of debt. He told the investigator that it was time to do the right thing, stand up, and take care of his debts now that he was financially stable. He was unaware at the time of the total amount of his delinquent debts but was aware they needed to be addressed. He was not stressed about the debts. He said he started to do online research about debt consolidation and was weighing the options of working with a debt consolidator or handling the debts on his own. He told the investigator he was gathering information and that once he had a handle on it, he could make a better, more informed decision. He said that in the next year he would gain more knowledge to make that decision. He said that he had the ability to pay and intended to pay his delinquent debts. (GE 2)

Applicant testified that after he completed college in 2009, his parents made payments on his student loans for a period, and he also made payments for a period. He said he was underemployed and not earning sufficient income to pay the student loans. In 2017, he was going through a divorce, and he was in the military not earning enough income to repay his student loans. He also stated there were periods of time when the loans were in forbearance or deferred.<sup>1</sup> He believes he stopped making payments sometime in 2012 or 2013. He testified he does not have sufficient money to repay his student loans at this time. When he last contacted the creditor, he was offered a payment plan but could not afford it. He could not recall when he made this contact. He planned on paying the smaller debts first and contacting creditors to dispute some debts. He planned to pay all of his debts. (Tr. 24-32, 36-47)

At Applicant's hearing, he testified he does not have any extra money to pay his delinquent debts. He is working to gain experience and knowledge so he can get a better job with an increased salary. He has no savings or pension plan. He has minimal expendable income at the end of the month after paying bills. He has made no payments on any of the debts alleged in the SOR. He testified he is researching how best to address the debts. He continues to study his options. Since his August 2020 interview with the

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<sup>1</sup> US Dept of Education placed student loans in forbearance from March 2020 to October 2023 due to the COVID-19 pandemic under repeated Presidential Executive Orders. Applicant's student loans were charged-off or in collection status in 2018. See, e.g., <https://studentaid.gov/announcements-events/covid-19>

government investigator, he has not taken any action on any of the debts alleged in the SOR. He acknowledged he received inquiries from the creditors of his student loans by mail. He said he filed them and did not respond to them. He testified he has not spoken to them in the past three years. (Tr. 24-32, 36-47, 55-58)

Applicant testified that he has randomly searched different websites on the Internet for options of how to resolve his delinquent debts but has not spoken to anyone personally or taken any specific action or contracted with any financial agency for assistance. He has not had formal financial counseling. Applicant stated that his plan is to research and study his options for resolving his debts (Tr. 44-47, 55-58)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes but may be considered in the application of the mitigating conditions, in making a credibility determination, 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income taxes as required.

Applicant failed to timely file his 2018 and 2019 federal and state income tax returns. He has 14 delinquent student loans totaling more than \$92,000 and more than \$30,000 of consumer and medical debts. He has been aware for years that they are a security concern. During his background interview, he told the investigator he was going to pay these debts and was researching the best option. During his hearing three years later, he admitted taking no action on any of the debts and was still researching the best option. The evidence supports the application of all 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant filed his delinquent tax returns and does not owe any delinquent taxes. I gave him the benefit of the doubt regarding the filing of his state income tax returns when he completed his federal tax returns. AG ¶ 20(g) applies.

Applicant has not contacted any of the creditors in the SOR to address his delinquent student loans and other consumer and medical debts. He told the government investigator three years ago he was researching his options on how to resolve the debts and intended to pay them. Since then, he has not taken any action and continues to research with no real plan. Applicant stated that he does not have the resources to pay his debts. He attributed some of his financial problems to being underpaid before he went into the service, then being underpaid while in the service, and going through a divorce. His divorce was in 2017. These were conditions beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly. Other than researching his options, he has not taken any action to address his delinquent debts and continues to procrastinate in addressing any of his legal obligations. AG ¶ 20(b) has minimal application. His debts are numerous and ongoing. I cannot find that future financial issues are unlikely to recur due to his inaction to address any of his debts. His conduct casts doubt on current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. He has not received financial counseling from a legitimate and credible source, and there are not clear indications that his problems are under control or being resolved. He has not made a good-faith effort to pay any of the creditors. He did not provide a reasonable basis to dispute any of the debts. AG ¶¶ 20(c), 20(d), and 20(e) do 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.

The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. He failed to meet his burden

of persuasion. 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:	For Applicant
Subparagraphs 1.c-1.bb:	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