



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



In the matter of:)	
)	
)	ISCR Case No. 23-00443
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

October 5, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns under Adjudicative Guideline F (Financial Considerations). Based upon a review of Applicant’s testimony and the documentary evidence, national security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on July 6, 2021. On March 9, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Adjudicative Guideline (AG) F. The action was taken under Executive Order 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 National Security AG effective within DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on March 20, 2023. He denied the allegation in SOR ¶ 1.j and admitted the remaining SOR allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 16, 2023. The case was assigned to me on May 23, 2023. DOHA issued a Notice of Video Teleconference Hearing on June 21, 2023. The case was heard on July 24, 2023, as scheduled.

The Government presented documents marked as Government Exhibits (GE) 1 through 4. Immediately after the hearing, Department Counsel offered an additional document marked as GE 5. Applicant testified on his own behalf and offered three exhibits, marked as Applicant Exhibits (AE) A through C. I admitted all of the parties' exhibits without objection. I kept the record open until August 21, 2023, to give Applicant the opportunity to supplement the record. He timely submitted two proposed exhibits, which I marked as AE D and E. These documents are also admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 31, 2023. (Tr. at 13-16, 18-19.)

Findings of Fact

Applicant is 32 years old. He graduated from high school in 2008 and has taken some college courses. He married in September 2013 and has one minor child. He separated from his wife in March 2018. They have not divorced. He has a new relationship, and Applicant and his cohabitant have a newborn child. He served in the U.S. Marine Corps (USMC) from July 2009 through May 2017, at which time he was honorably discharged. He experienced a period of unemployment for nine months in 2017 and 2018. In August 2018 he began working as a specialist for a U.S. Government contractor. He changed employers to his current clearance sponsor in November 2022, when his former employer took over on the government contract on which he now works as a communications specialist. He was granted a security clearance in 2009. He is presently applying for national security eligibility in connection with his employment. (Tr. at 20, 22-24; GE 1 at 7, 11-17, 18-19, 21-22, 26-27, 32-33, 34-35.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in the SOR that Applicant is ineligible for clearance because he is financially overextended with delinquent debts and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR identifies 13 delinquent debts in collection totaling about \$62,000. The existence and amounts of these debts are supported by the Government's credit reports in the record dated September 1, 2021, December 8, 2022, and July 24, 2023. (GE 2; GE 3; GE 5.)

The background and status of each of the debts alleged in the SOR are as follows:

SOR ¶ 1.a. Charged-Off Balance (\$36,577) on Vehicle Loan Following Voluntary Repossession. Applicant opened this account in July 2016 while he was serving in the USMC. Following his discharge, he was unemployed for a period and then planned to relocate to another state (State 2). He knew that he could not afford to continue making the monthly payments, and he voluntarily relinquished the vehicle. Also, he had access to another car in State 2. He mistakenly understood that returning the vehicle would satisfy the debt on the loan. He found it “odd” that the creditor kept sending him bills after the repossession, but he figured that it would just take time to clear up the paperwork. He became aware of the outstanding debt at the time of his security clearance background interview in September 2021. Applicant testified that the creditor is demanding the full payment of the balance on the loan after deducting the resale price for the vehicle (\$36,577), and that he has attempted unsuccessfully to negotiate a payment plan. His last conversation with the creditor was in January 2023, about six months prior to the hearing. In a post-hearing written statement, Applicant acknowledged his responsibility for this debt and wrote that he “was working with the creditor to come up with an agreement to pay off this debt.” **This debt is not resolved.** (Tr. at 21, 25-32; GE 2 at 2; GE 3 at 2; GE 4 at 5-6; GE 5 at 8; AE D at 1.)

SOR ¶ 1.b. Collection Debt (\$4,542) on an Unpaid Rental Lease. Applicant moved out of the family apartment in State 1 when the couple separated. He then moved to State 2. His wife agreed to continue paying rent pursuant to the lease, which they both had signed. However, she later relocated to State 3 and broke the lease on the apartment. Applicant acknowledges his obligation on the lease and made a one-time payment of \$600 in 2022. He has not made any further payments because he is waiting for his wife to acknowledge her responsibility for being a party to the lease and then breaking the lease. **This debt is not resolved.** (Answer at 3; Tr. at 36, 46-49; GE 3 at 3; GE 4 at 5; GE 5 at 6; AE D at 1.)

SOR ¶ 1.c. Charged-Off Balance (\$549) on an Unpaid Credit-Card Account. Applicant opened this account in January 2021 and defaulted on the monthly payments in April 2021. He paid off the account in March 2023. **This debt is resolved.** (Tr. at 50-53; GE 2 at 2; GE 3 at 5; GE 4 at 3; GE 5 at 7; AE D at 1; AE E at 1.)

SOR ¶ 1.d. Past-Due Debt (\$315) on a Pay-Day Loan Account. Applicant defaulted on this loan. He paid the debt in December 2022. **This debt is resolved.** (Tr. at 53; GE 2 at 2-3; GE 3 at 4; AE D at 1.)

SOR ¶ 1.e. Collection Debt (\$235) on an Account. Applicant defaulted on this account, and it was referred to a collection agency. He paid this debt in March 2023. **This debt is resolved.** (Tr. at 53-54; GE 2 at 3; GE 4 at 4 AE D at 1; AE E at 2.)

SOR ¶ 1.f. Past-Due Debt (\$114) on an Insurance Account. Applicant paid the past due amount in March 2023. **This debt is resolved.** (Tr. at 54; GE 2 at 3; AE D at 1.)

SOR ¶ 1.g. Past-Due Debt (\$200) on a Credit-Card Account. Applicant paid this past-due debt, and the account is presently in good standing. Applicant continues to use this credit card. **This debt is resolved.** (Tr. at 55; GE 2 at ; GE 3 at ; GE 5 at ; AE D at 1.)

SOR ¶ 1.h. Charged-Off Balance (\$17,830) on Vehicle Loan Following Involuntary Repossession. In November 2016, Applicant co-signed on a vehicle loan for his wife to have a car. When they separated, they reached an agreement that she would pay the loan for her vehicle. She defaulted on the loan after she had moved from State 3 to State 2 in 2018, and the car was eventually repossessed. Applicant's wife lives with her grandmother and was on public assistance in State 2 for at least a period. The record is silent as to whether she is presently employed. At the hearing, Applicant claimed that he was in contact with the creditor, though he admitted that he is reluctant to pay this debt voluntarily when he believes that the debt is owed by his wife. Once the marriage is finally terminated and the responsibility for the debt is resolved, he is willing to pay whatever his share of the debt may be. He has not, however, taken any steps to divorce his wife due to the cost of legal services. Applicant wrote in a post-hearing statement that he plans to seek mediation with his wife to have her take responsibility for the debt or to agree with him to split the debt. **This debt is not resolved.** (Tr. at 21-22, 32-45; GE 2 at 3; GE 3 at 3; GE 5 at 8; AE D at 1.)

SOR ¶ 1.i. Collection Debt (\$760) on a Cable-TV Account. Applicant failed to return cable equipment after he moved, and his account was referred to a collection agency. He returned the equipment. He was subsequently able to open a new account with the same cable service provider. **This debt is resolved.** (Tr. at 56; GE 3 at 3; GE 4 at 5; AE D at 1.)

SOR ¶ 1.j. Collection Debt (\$269) on a Cable-TV Account. Applicant failed to pay the final balance on this account when he moved out of an apartment, and it was referred to a collection agency. He paid the balance on the account in November 2022. **This debt is resolved.** (Tr. at 58; GE 3 at 4; GE 4 at 4; AE D at 1.)

SOR ¶ 1.k. Unpaid Debt (\$235) of a Loan Account. Applicant opened this account when he was serving in the USMC. He defaulted and the account was referred to a collection agency. He was unaware that he owed a balance on the account. Applicant paid the debt in November 2022. paid a balance due on the account in November 2022. **This debt is resolved.** (Tr. at 57; GE 3 at 4; GE 4 at 4; AE D at 2.)

SOR ¶ 1.l. Collection Debt (\$123) on a Utility Account. Applicant failed to pay the final bill on this account after he moved. He paid the account in March 2023. **This debt is resolved.** (Tr. at 58; GE 3 at 4; GE 4 at 4, 8; AE D at 2.)

SOR ¶ 1.m. Charged-Off Debt (\$73) on an Account. Applicant is unaware of the nature or history of this account. He paid it in March 2023. **This debt is resolved.** (Tr. at 59; GE 3 at 5; GE 4 at 3; AE D at 2; AE E at 1.)

Whole-Person Evidence

Two supervisors and one co-worker submitted impressive character-reference letters on Applicant's behalf. Applicant's project manager describes Applicant as "a remarkable and energetic leader who has overcome numerous obstacles to get to this level." Applicant's government supervisor wrote that he has observed Applicant grow from an entry-level specialist to a lead communications technician. He trusts Applicant to lead an important function for the government and believes that Applicant is an honorable person and an "extremely valuable member" of the team. He believes in Applicant's ability "to safeguard the interest of the United States." Applicant's co-worker is a government employee, who praised Applicant's work ethic and professionalism. (AE A through AE C.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying 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.

The SOR alleged that Applicant owed approximately \$62,000 for the 13 alleged delinquent debts. The Government's credit reports in the record and Applicant's admissions in the Answer establish the existence of these debts and the application of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate security concerns under Guideline F.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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.

Some of the debts set forth in the SOR are routine debts that did not arise under any unusual circumstances other than Applicant's lack of attention to his financial affairs. Other debts arose under the unusual and difficult circumstances of Applicant's separation from his wife, and during his unemployment following his discharge from the USMC. These circumstances largely beyond his control. His management of those debts, specifically SOR ¶¶ 1.a, 1.b, and 1.h, however, was not responsible. He did not use sufficient diligence to understand that he had a substantial debt to pay after the voluntary repossession of a vehicle, and once he learned about that debt, he did not take responsible steps to begin to resolve it. The two other debts arose from his wife's actions breaking a lease and defaulting on a car loan. Applicant was not directly the reason why these delinquencies arose, but as a co-obligor on both debts, he was fully obliged to pay them. He has not taken responsible actions to resolve them. He has not pursued a divorce or marital separation agreement to work out a resolution of his responsibility for the debts or parts of the debts. He merely ignored them and has moved onto a new relationship and started a new family. Applicant's inaction and failure to address his marital debts, either directly with creditors or through a marital separation agreement or divorce, does not demonstrate the good judgment and responsibility of one entrusted to safeguard sensitive information. Furthermore, Applicant's behavior casts doubt on his reliability,

trustworthiness, and good judgment. Mitigation under AG 20(a) and (b) has not been established.

Applicant has not received any financial counseling. Although he has resolved ten of his delinquent debts totaling about \$2,900, he does not have the remaining three debts under control. AG ¶ 20(c) is not established.

Applicant has initiated a good-faith effort to repay ten of the debts set forth in the SOR (¶¶ 1.c through 1.g and 1.i through 1.m), but he has not made a good-faith effort with respect to his three largest debts (SOR ¶¶ 1.a, 1.b, and 1.h), which total about \$59,000. AG ¶ 20(d) is not fully established.

Lastly, AG ¶ 20(e) is not applicable because Applicant does not dispute any of his alleged unpaid debts. With respect to his marital debts in SOR ¶¶ 1.b and 1.h, he only disagrees with his wife as to who should pay them and how much he should pay. Overall, Applicant has not mitigated the security concerns raised under Guideline F.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given significant weight to Applicant's service to the U.S. Government as a Marine and as a government contractor. I have also given weight to the character evidence provided by Applicant and to the difficulties raised by his unemployment following his military discharge. However, his inaction regarding his three largest debts shows that he lacks the maturity for national security eligibility. He is not able or willing to face the difficult task of resolving his marital debts through a separation agreement or divorce. Similarly, he has not been willing to face the difficult task of resolving a large loan for a vehicle he voluntarily surrendered. It is easy to buy a vehicle

on credit, but it is difficult to tackle the job of paying a large debt after a repossession. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c through 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i through 1.m:	For Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge