



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02535
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

10/18/2023

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 24, 2022. On February 13, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on February 22, 2023, and provided a statement in support. He elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On May 10, 2023,

Department Counsel submitted the Government's File of Relevant Material (FORM), including Government's Exhibits (GX) 1 through 6. Applicant received the FORM on May 23, 2023 and was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He did not submit a response.

The case was assigned to me on September 28, 2023. The SOR and the Answer (GX 1-2) are the pleadings in this case. GX 3 through GX 6 are admitted without objection.

### **Findings of Fact**

Applicant is 36 years old, married and has two step-children. He is a high school graduate and he earned an automotive technical certification in 2011. He served on active duty in the Army from December 2012 through May 2016. Following his honorable discharge, he has been consistently employed in various technical positions. (GX 3, 6)

The SOR alleges nine delinquent consumer and medical accounts totaling \$11,663 (SOR ¶¶ 1.a-1.i) and one delinquent account totaling \$20,217 relating to the voluntary repossession of a vehicle (SOR ¶¶ 1.j). In his Answer, Applicant admitted all the allegations, with explanations. In addition to his admissions, the debts are established by his June 2022 and May 2023 credit reports. (GX 1-2, 4-5)

Applicant did not list any delinquent accounts in his May 2022 SCA. During his July 2022 interview with a security clearance background investigator, he initially denied any delinquent accounts and stated that "for the most part," he paid his bills on time. When asked about specific accounts, he recognized the accounts associated with the voluntarily vehicle repossession (¶ 1.j), a cellphone (¶ 1.c) and home furnishings (¶ 1.d). He believed those accounts had been resolved and closed. He further explained that his wife managed their finances and may have opened some of the other accounts without his knowledge. He stated he would speak with his wife and formulate a plan to address his delinquent debts. (GX 3, 6)

In his SOR answer, Applicant claimed to have a plan to resolve his delinquent accounts. He stated that, starting in March 2023, he would dedicate a portion of his monthly income toward settling the accounts. He did not provide a budget, proposed payments or other details of that plan. (GX 2)

SOR ¶ 1.a (\$4,893) is a consumer rental account that was opened in about April 2017 with a last payment issued in May 2017. The account was placed for collection in about August 2020. Applicant's May 2023 credit report reflected that the account has since been "closed or paid" with a \$0 balance. (GX 4-5)

SOR ¶¶ 1.b (\$2,531), 1.f (\$663), 1.h (\$277) and 1.i (\$149) are medical accounts that were placed for collection from 2020 through 2022. These accounts were listed in

Applicant's June 2022 credit report, but do not appear in his May 2023 credit report. There is no record that the accounts were paid or otherwise resolved. (GX 4-5)

SOR ¶¶ 1.c (\$1,262) and 1.d (\$750) are the cellphone and home furnishings accounts discussed above, which were placed for collection in about September 2020 and October 2021, reversely. These accounts were listed in Applicant's June 2022 credit report, but do not appear in his May 2023 credit report. There is no record that the accounts were paid or otherwise resolved. (GX 4-6)

SOR ¶ 1.e (\$679) is a consumer account that was placed for collection in about July 2020. This account was listed in Applicant's June 2022 credit report but does not appear in his May 2023 credit report. There is no record that the account was paid or otherwise resolved. (GX 4-5)

SOR ¶ 1.g (\$459) is a credit card account that was opened in August 2021. The account became delinquent and was charged off in about May 2022. The account continues to show as charged off in Applicant's May 2023 credit report. (GX 4-5)

SOR ¶ 1.j (\$20,217) is a vehicle account that was opened in May 2017 with a last payment occurring in November 2018. During his background interview, Applicant stated he believed the account was only in his wife's name, but also recalled signing paperwork when they purchased the vehicle. They allowed the vehicle to be repossessed at an unspecified date and the account is reflected as charged off in his July 2020 and May 2023 credit reports. (GX 4-6)

Applicant's credit reports reflect that he resolved two other delinquent credit card accounts that were not alleged in the SOR. He also opened a new vehicle loan in about May 2022 with a balance of \$24,266 and a monthly payment of \$686. As of May 2023, that account was current. (GX 4-5)

Applicant did not respond to the Government's FORM or otherwise offer any mitigating evidence beyond what he stated in his SOR answer. He also did not submit a budget and did not detail or document his total monthly income and expenditures.

### **Policies**

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

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 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(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 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 not drawn 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 to obtain 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 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.

## **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. . . .

The financial security 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 adjudicative guideline notes two conditions that could raise security concerns under AG ¶ 19 and are potentially applicable in this case:

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

Applicant's admissions and the evidence reflect that he has incurred delinquent accounts that occurred over several years and are ongoing. Both of the above disqualifying conditions apply.

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.

There are three pertinent 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has maintained consistent employment since leaving the Army in 2016 and little is known about the potential causes of his ongoing delinquent accounts. In his SOR answer, Applicant stated that he had formulated a plan to address his remaining debts and the credit reports reflect that he resolved the consumer rental account (SOR ¶ 1.a) and two other delinquent credit card accounts not alleged in the SOR. However, he has not presented any details or supporting documentation to show that he is resolving the debt associated with the vehicle repossession or any of his remaining delinquent accounts.

It is also noted that several of Applicant's debts that were in a collection status eventually dropped from his most recent credit report. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14-03612 at 3 (App. Bd. Aug.15, 2015).

AG ¶¶ 20(a) and 20(d) are applicable to SOR ¶ 1.a. Applicant learned of this debt during his security clearance background interview. Shortly afterwards, he took action to resolve the debt.

However, AG ¶¶ 20(a), and 20(d) are not applicable to SOR ¶¶ 1.b – 1.j. Although Applicant's current financial position has sufficiently improved to resolve one SOR debt, his history of financial difficulties has not been adequately addressed, and several delinquent debts remain ongoing and unresolved.

AG ¶ 20(b) is also not applicable. Applicant has not described any circumstances beyond his control that led to the financial problems. Instead, Applicant claimed he was largely unaware of his delinquent accounts until his background interview in July 2022 and that his wife managed the family finances. However, an applicant's lack of awareness of significant debt problems may still raise substantial questions about the applicant's security worthiness. See ISCR Case No. 13-00786 at 3 (App. Bd. Mar. 28, 2014). Further, after he became aware of the debts, Applicant has not shown sufficient evidence to establish that he has acted responsibly under the circumstances.

Applicant has resolved one of his delinquent accounts. However, his actions to date are insufficient to establish mitigation of the ongoing financial security concerns.

### **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 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 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. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

Applicant honorably served in the Army from December 2012 through May 2016 and has since maintained consistent employment. Once he learned of his delinquent accounts, he took some action to resolve one debt alleged within the SOR. However, he has not established a plan or taken sufficient action to establish good-faith, responsible efforts to resolve his delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-j:	Against Applicant

### **Conclusion**

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

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Bryan J. Olmos  
Administrative Judge