



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01525
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

11/01/2023

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**Decision**  
\_\_\_\_\_

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 28, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on October 4, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2023.

The hearing was convened as scheduled on May 16, 2023. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibit (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. The deadline was extended several times, but he did not submit any documentary evidence. His emails have factual statements, so I have marked the emails collectively as AE D and admitted them without objection.

## Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2002. He served on active duty in the U.S. military from 1989 until 1991. He has a 20% disability rating from the Department of Veterans Affairs, and he receives \$327 per month in disability pay. He is a high school graduate with technical training and licenses. He married in 1996, separated in about 2020, and is pending a divorce. He has two adult children and a minor child from the marriage. (Tr. at 19, 22-24, 33-34, 53; GE 1, 4-6)

The SOR alleges a charged-off \$23,829 debt to a bank (SOR ¶ 1.a) and a mortgage loan that was \$11,086 past due, with a balance of \$288,546 (SOR ¶ 1.b). Applicant attributed his financial problems to his separation, pending divorce, and his wife's overspending. (Tr. at 17-18; GE 6)

Applicant and his wife refinanced their joint mortgage loan in 2017 and again in April 2020. A May 2022 credit report lists the account as \$11,086 past due, with a balance of \$288,546 (SOR ¶ 1.b). Applicant withdrew from his 401(k) retirement account to bring the loan current. (Tr. at 17-18, 21, 43-47; GE 2, 3, 6; AE A)

Applicant's wife was in a car accident in about 2016. Her car was a total loss, and she had a neck injury that required an operation. There was a delay in receiving funds from the insurance company. Rather than wait for the insurance company, Applicant and his wife took out a loan of between about \$23,000 and \$30,000 in October 2016, which was used to buy a car and pay her medical bills. When a settlement was received, his wife took the money and did not give him anything to pay the loan. He made his last payment on the account in February 2019, and the creditor charged off the account with a balance of \$23,829 (SOR ¶ 1.a). He made no attempt to resolve the account after it was charged off, until the SOR spurred him into taking some action. (Tr. at 25-32, 42; GE 2, 3, 6)

Applicant and his wife entered into a mediated settlement agreement in May 2023. The agreement provided that their house would be sold at a mutually agreed upon price. The SOR ¶ 1.a debt would be "negotiated down as low as possible and paid in full" from the proceeds of the sale. They also agreed to pay the IRS \$7,500 for their 2022 taxes from the proceeds. Applicant and the SOR ¶ 1.a creditor agreed to settle the debt for a lump-sum payment of \$7,148, to be paid no later than June 11, 2023. (Tr. at 35, 39-40, 48; AE B, C)

Applicant testified that there was interest in the house, "the housing market is very high over here right now," and he expected the house to be sold. He stated that if the house is not sold, he would start paying \$297 per month to the creditor until the house is sold. The creditor told him that the settlement deal would still be available if he made those payments. He stated that his finances will be stable after the house is sold. In June 2023, he stated that he made a \$200 payment to the creditor to keep the settlement deal, but he did not submit any supporting documentation. The house never sold, Applicant has never settled the debt, and he has not provided documentation of

any payments. He stated that “[t]he current housing market here has stalled and I am unable to secure a buyer at this time.” (Tr. at 36-38, 49-54; AE D)

## **Policies**

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, 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(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.”

Under Directive ¶ E3.1.14, the Government must 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.” The applicant 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.

Section 7 of EO 10865 provides that adverse 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 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 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 defaulted on a mortgage loan and a consumer loan. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

Applicant attributed his financial problems to his separation, pending divorce, and his wife's overspending. Those events were beyond his control. To receive the benefit of AG ¶ 20(b), he must also prove that he acted responsibly under the circumstances.

Applicant withdrew from his 401(k) and brought his mortgage loan current. SOR ¶ 1.b is mitigated. He made no attempts to resolve the consumer loan on SOR ¶ 1.a after it was charged off, until the SOR spurred him into taking some action. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. ISCR Case No. 17-03229 at 6 (App. Bd. Jun. 7, 2019).

Applicant and his wife entered into a mediated settlement agreement in May 2023. The agreement provided that the SOR ¶ 1.a debt would be "negotiated down as low as possible and paid in full" from the proceeds of the sale of their house. Applicant and the creditor agreed to settle the debt for a lump-sum payment of \$7,148, to be paid no later than June 11, 2023. He testified that if the house is not sold, he would start paying \$297 per month to the creditor until the house is sold. The creditor told him that the settlement deal would still be available if he made those payments. The house never sold, Applicant has never settled the debt, and he has not provided documentation of any payments. His intention to pay the debt in the future is not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant does not have a track record that would enable me to trust that he will pay the remaining SOR debt. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay the debt. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is partially applicable. None of the other mitigating conditions are applicable. I find that financial considerations security concerns remain despite the presence of some mitigation.

### **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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **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:	Against Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge