



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



In the matter of: )  
)  
) ISCR Case No. 23-00091  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: *Pro se*

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**Decision**

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LAFAYE, Gatha, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed and submitted a security clearance application (SCA) on May 12, 2022. On January 26, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The CAS acted 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 responded to the SOR on February 06, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on about March 27, 2023, including Items 1 through 9. On

about March 28, 2023, a complete copy of the Government's file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on April 4, 2023, and did not respond. The case was assigned to me on July 14, 2023. The Government's exhibits, Items 1 through 9, are admitted in evidence without objection.

### **Findings of Fact**

In Applicant's response to the SOR, he admitted all allegations (SOR ¶¶ 1.a - 1.q), without comment. His admissions are incorporated in my findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He has worked with his current employer since February 2016. Additionally, since about 1999, he has continuously maintained employment in a part-time position on weekends with a non-defense employer. He earned his associate's degree in May 2010, and his bachelor's degree in May 2012. He married in 1993 and has five children, ages 30, 21, 18, 9 and 7 years old. His wife does not work outside of the family home. (Items 3 and 4)

The SOR alleges 17 financial concerns including three Chapter 7 Bankruptcy actions filed via voluntary petition in 1994, 2001, and 2015 (SOR ¶¶ 1.a - 1.c), in addition to 14 delinquent debts altogether totaling about \$21,053. Applicant's three bankruptcy filings are reflected in court records (Items 5, 6, and 7), and his delinquent debts are reflected in credit bureau reports from May 2022 and March 2023. (Items 8 and 9)

In his May 2022 SCA, Applicant disclosed he filed a Chapter 7 bankruptcy petition in June 2015 and that his debts, which totaled about \$20,000, were discharged in about September 2015. He stated he was overwhelmed with expenses at the time due to working while attending school. His wife was not working, he stated, because of childcare expenses. (Item 3 at 32, and Item 4 at 2) During his July 2022 DOD investigative interview, Applicant did not disclose or discuss his two previous Chapter 7 bankruptcy petitions: one filed in July 1994 and discharged in November 1994; and the other filed in October 2001 and discharged in February 2002. During the same interview, he disclosed his intent to possibly file another bankruptcy petition in August 2023 because, as he stated, he would be eligible to file again after waiting about eight years. (Item 4 at 3)

Applicant disclosed that his monthly net income totaled about \$3,664 for both his full and part-time positions, and he estimated his monthly expenses, excluding credit card debts not being paid, totaled about \$4,000. He stated there were no plans for his wife to start working because she takes care of their children, and her working would require him to purchase another car. He further disclosed his wife handles the household finances, and that she pays her own bills, but does not pay bills in his name. When asked about a future financial plan, he stated that he hoped to reduced expenses when his older children leave home, and he also hoped to have his student loans forgiven as well. His student loans of about \$40,000, were in a deferred status at the time of the interview. (Item 4 pp. 3-4)

The evidence regarding financial issues alleged in the SOR is summarized below.

**SOR ¶¶ 1.a – 1.c (Chapter 7 bankruptcy petitions of 1994, 2001, and 2015):** In his response to the SOR, Applicant admitted to filing three separate voluntary petitions under Chapter 7 bankruptcy, and having his debts discharged in each one. Bankruptcy court records in Items 5, 6, and 7 support allegations in SOR ¶¶ 1.a. – 1.c., as admitted. Applicant's multiple bankruptcies resulted primarily from consumer debts. In his 2001 bankruptcy action, the Internal Revenue Service (IRS) and the Department of Justice (DOJ) were among the listed creditors. (Item 6 at 4) The cause or amount of Applicant's indebtedness to these federal agencies is not provided in the record. (Item 6) Additionally, Court records of his 2015 bankruptcy showed that his student loan debts actually totaled more than \$45,000 at that time. (Item 7 at 1)

**SOR ¶¶ 1.d (\$4,879), 1.e (\$3,278), and 1.h (\$1,905)** Applicant admitted all three delinquent debts. For each debt, he exceeded the creditor-granted credit limit. All accounts were eventually charged off by the creditors after Applicant became 150 days or more delinquent on required payments. (Item 8 pp. 3-4; and Item 9 pp. 4, 6, and 8) These debts are unresolved.

**SOR ¶ 1.i (\$1,419):** Applicant admitted this debt. He opened this individual account in November 2017. The debt was charged off for \$1,419 in about March 2022 after it become 150 days or more past due. (Item 8 at 4) The March 2023 credit bureau report reflected a balance of \$1,118, and a payment of \$150 in February 2023. Applicant appears to have made repayment arrangements with the creditor, and has paid down the balance of the debt by \$301 in March 2023. (Item 9 at 7) This debt is being resolved.

**SOR ¶¶ 1.f (\$2,628) and 1.g (\$2,611):** Applicant admitted both debts. Both are individual accounts that have remained in a collection status since 2021 or earlier. The last activity for both accounts occurred in 2019, with major delinquencies reported in 2021 and 2020 respectively. (Item 8 pp. 3-4, and Item 9 pp. 5 and 7) These debts are unresolved.

**SOR ¶¶ 1.j (\$1,418), 1.k (\$501), and 1.l (\$467):** Applicant admitted all three delinquent debts. These three individual accounts have been in a collection status since at least 2021, with the first major delinquencies reported on all accounts between December 2020 and mid-2021. (Item 8 at 5, and Item 9 pp. 5 - 7) These debts are unresolved.

**SOR ¶ 1.m (\$971 past due of \$6,404 total balance):** Applicant admitted this delinquent debt. He opened this individual account in August 2016 and submitted the last payment on it in October 2021. The May 2022 credit bureau report indicated the debt was 120 days past due, for the amount of \$971. The creditor ultimately charged off this delinquent debt for \$6,531 in about February 2023. (Item 8 at 6, and Item 9 at 9) This debt is unresolved.

**SOR ¶ 1.n (\$231 past due of \$976 total balance):** Applicant admitted this delinquent debt. This individual account was opened in July 2017, with a \$750 credit limit imposed by the creditor. In May 2022, this debt was reported 120 days delinquent with an outstanding balance of \$976. The creditor ultimately charged off this delinquent debt for \$976 in about February 2023, as reported in the March 2023 credit bureau report. (Item 8 at 6, and Item 9 at 9) This debt is unresolved.

**SOR ¶ 1.o (\$297 past due of \$804 total balance):** Applicant admitted this delinquent debt. This individual account was opened in June 2018, with a \$500 credit limit. In May 2022, this debt was reported 120 days delinquent with an outstanding balance of \$804. The creditor ultimately charged off the delinquent debt for \$859 in about February 2023, as reported in the March 2023 credit bureau report. (Item 8 at 6, and Item 9 at 10) This debt is unresolved.

**SOR ¶ 1.p (\$265 past due of \$574 total balance):** Applicant admitted this delinquent debt. This individual account was opened in November 2017, with a \$300 credit limit. In May 2022, this debt was reported 120 days delinquent with an outstanding balance of \$265. The creditor ultimately charged off this delinquent debt for \$624 in about February 2023, as reported in the March 2023 credit bureau report. (Item 8 at 6, and Item 9 at 14) This debt is unresolved.

**SOR ¶ 1.q (\$183 past due of \$340 total balance):** Applicant admitted this delinquent debt. This individual account was opened in July 2017, with a \$200 credit limit. In May 2022, this debt was reported 120 days delinquent with an outstanding balance of \$183. The account was transferred or sold to another creditor and remains in a collection status for \$346. (Item 8 at 7, and Item 9 at 10) This debt is unresolved.

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline 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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant has a long history of financial problems as established by his three Chapter 7 bankruptcy actions, starting in 1994. His current delinquent debts are numerous and ongoing and his longstanding delinquent debts in the SOR remain unresolved.

AG ¶ 20(b) is not established. Applicant has been gainfully employed since at least 2016, and he has also consistently maintained a second part-time position over this period. There is no indication he acted responsibly by taking meaningful steps to substantively address his delinquent debts. He is credited with addressing the one delinquent account, but this action alone is insufficient to establish mitigation.

AG ¶ 20(c) is not fully established. Though Applicant would have been required by the bankruptcy court to participate in financial education and counseling pursuant to his bankruptcy actions, his financial problems are not at all under control.

AG ¶ 20(d) is not fully established. Applicant is credited with the taking action to begin addressing one delinquent debt in late 2020. However, he has multiple delinquent debts that he did not act on. He has not communicated with most of his creditors nor has he established a repayment plan to address his other delinquent debts. He also informed DOD investigators of his plan to file another bankruptcy action in late 2023, to address his ongoing financial problems, because, as he stated, it had been eight years since his last Chapter 7 bankruptcy action.

In sum, there is insufficient evidence for a determination that Applicant's 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 his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain in this case.

### **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 in this case.

## **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.h:	Against Applicant
Subparagraphs 1.i:	For Applicant
Subparagraphs 1.j – 1.q:	Against 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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Gatha LaFaye  
Administrative Judge