



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXX	)	ISCR Case No. 22-01033
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

11/06/2023

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**Decision**

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KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on June 24, 2021. On June 8, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant filed an undated Answer and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 7, 2022. The case was assigned to me on March 24, 2023. On May 30, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing would be conducted via video conference on July 20, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 7 were admitted without objection. Applicant and one other witness testified. After the hearing, he timely submitted by August 21, 2023, three exhibits marked Applicant's Exhibits (AE) A through C. AE A through AE C were admitted without objection. DOHA received the transcript (Tr.) on July 28, 2023.

### **Findings of Fact**

Applicant is 52 years old. He married in June 1992 and divorced in February 2018. He has one adult daughter (28) from his marriage. He and his cohabitant have a 13-year-old daughter. He served on active duty in the U.S. Navy from December 1990 until December 2014, when he retired with an honorable discharge. He took courses from an aviation institute from January 2015 until June 2016. At the time of his June 2021 SCA, he was enrolled in a college. He was unemployed from January 2015 to October 2015, after leaving the Navy. During that time, he was supported by his savings and did not suffer any financial difficulties. Since December 2016, he has worked for a defense contractor. He had security clearances while in the Navy. While serving in June 2010, his security clearance was favorably adjudicated but with a caution to address his delinquent debts. (GE 1, 2, and 7; Tr. 23-24.)

Under Guideline F, the SOR alleged 13 delinquent debts, 12 of which total \$29,444. The SOR did not assign a value to the thirteenth, a foreclosed mortgage account. (SOR.) The SOR is supported by the credit reports. (GE 4 through 6.) Applicant admitted those allegations with brief explanations. More specially, he admitted nine SOR debts, SOR ¶¶ 1.a, b, d – g, and i through k, stating: "Working with [XYZ] Law firm and [the creditor] to rectify the situation." Those nine debts total \$24,531. (Answer.) His Answer stated that he "inherited this [SOR] debt after divorce." That was clarified during his October 25, 2021 personal subject interview (PSI), when he said: "During the divorce, it was ruled that [he] was financially responsible for all debts." Because he had given his then wife a power of attorney for when he was deployed in the Navy, he was unaware of most of the delinquent SOR debts. He found out about his debts, when he applied for a loan and was told that his credit score was very low. He then pulled his credit report and looked into his debts. (GE 2; Tr.16-17.)

In about mid-June 2010 while on active duty in the Navy, Applicant had his security clearance favorably adjudicated. That favorable determination, however, came with a warning that he needed to keep his finances in line. (Tr. 24-25.)

Applicant received the SOR in about June or July 2022, and when he answered it, he was working with XYZ Law firm to address the SOR debts. He testified that he paid the firm about \$187 per month for about four months. AE A shows four payments to that firm of \$109.95 from April 2022 through July 2022. He wanted the firm to help him pay

the creditors. He learned, however, that the firm's purpose was not to pay his debts. The firm was "not in the business of, actually, paying the debt" but instead "to . . . find ways to, or loopholes to, circumvent to improve" his credit report. "That wasn't my intention." He stopped using XYZ after July 2022. It did not resolve any of the SOR debts. (Tr. 25-29.)

**SOR ¶¶ 1.a through f, and i through k.**

Applicant stopped working with XYZ Law firm in the summer of 2022 and contacted by phone each of the SOR creditors. He explained that if he lost his clearance, it would be financially detrimental to him. If that happened, he would be released by his employer. He could not guarantee those creditors anything. He made the same phone calls the week of the hearing after speaking with Department Counsel. Only one creditor, discussed below, made him a settlement offer. All others wanted lump sum payments, (Tr. 23, 31-37.) He had made similar calls in 2021 before his November 2, 2021 follow-up PSI, but none of those creditors "would work a payment plan with" him. He plans to pay off each account when he has the money to pay the account in full. (GE 2.) Those accounts are SOR ¶¶ 1,a through f, and i through k. Those SOR debts have not been resolved.

**SOR ¶ 1.g.**

This is a charged-off account for \$1,458. Days before the hearing, after speaking with Department Counsel, Applicant telephoned the collection agency and arranged a payment plan. He is to pay a fixed sum monthly beginning August 1, 2023, for 12 months. After the hearing, Applicant submitted AE B, a schedule of 12 postdated, pre-authorized, and automatically withdrawn payments of \$121.52 from his bank to the creditor. That will satisfy the full balance. (Tr. 32-33.) This SOR debt is being resolved.

**SOR ¶ 1.h.**

This is a charged-off account for \$1,218. Applicant had agreed with the creditor to a payment plan, but it has not yet sent him a written plan, as promised. (Tr. 34.) This SOR debt has not been resolved

**SOR ¶ 1.i.**

This is a medical account in collection for \$62. Applicant testified that this account had been resolved, and he was to provide supporting documents after the hearing. (Tr.36.) No documents were provided after the hearing. This SOR debt has not been resolved.

**SOR ¶ 1.m.**

This is property associated with Applicant's home mortgage account that was foreclosed in 2019. The SOR did not assign a value to this allegation. Nor did the credit

reports. GE 4 reported zero past due and a zero balance. GE 5 and 6 reported no amounts past due, no balances, and that the collateral was sold. That is consistent with his testimony that the home sold for more than was owed under the loan. (Tr. 37-39.) This SOR account has been resolved.

## **Finances**

Applicant testified about the current state of his finances per month. Applicant's monthly income (take-home pay \$5,398 and VA 90% disability) is about \$8,700. His monthly basic expenses are about \$4,775, leaving a net remainder of about \$3,925. (Tr. 41-43):

Applicant has zero in his savings account and \$25 in his checking account. He recently had to replace his air conditioner, which cost \$9,300. He did not have that amount in his savings account, so a friend lent him \$1,700, to be paid back tomorrow. He gives his net remainder to his cohabitant. "She is the mother of my child, she takes care of the house. She pays all the bills." (Tr. 44-45.) The smaller SOR debts range from \$2,390 to \$62.

Applicant testified about the lump sum back payment of \$14,034 he received from the Veterans Affairs Administration when his disability was raised to 90%. He received that in December 2021 and used it "to resolve a lot of debts." His credit score went from 420 to 572, which he said was 'still not that great.' He did not resolve the SOR debts. He resolved "immediate debts, like payday cash loans." (Tr. 46-47.)

## **Character Witness**

Applicant called Ms. ABC as a character witness. She has known him for a little over 23 years. They have worked together for the same defense contractor for the past seven years, since 2016. She understands his background in security clearances within the military and within their current employer. She has been his boss at their current employer. She understands what he has told her about his financial situation. While he was still in the service, his wife "decided to take out a couple of accounts . . . in his name and not mention anything." The witness knows that Applicant went to court a couple of times to get "[his wife] to own up and pay for some of the stuff she was obligated to." Applicant's financial situation is getting better. The witness believes his credit score has improved 12 points, then 20 points. He has been "making strides." She does not think his financial situation was caused by his negligence or on purpose. (Tr. 15-19.)

The witness was in the U.S. Navy for eight years. She did three cruises and was honorably discharged for medical reasons. Applicant was one of her superiors in the Navy. He was her mentor, "a guide to the Navy." "The Navy decided they were going to come up with this . . . Diversity Program . . . [Applicant] was a tall Black guy from [a southern state] and a short White girl from [a northern state]. How could it get more diverse. We got north and south . . . male /female, and White and Black." (Tr. 19-20.)

The witness and Applicant had lunch together and found out they had a lot in common. Since then, they have been there for each other's important personal and family issues. They now golf together, play pool together, and "know everything about each other's lives." She knows his family very well, and he knows her family intricately. "She "couldn't imagine him not being in [her] life as much as he's been there for [her] personally." He "has the utmost integrity and honesty that you can get out of a person." (Tr. 19-20.)

## **Law and Policies**

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

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel . . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise any 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).

The guideline notes 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's SOR debts are established by his admissions and the Government's credit reports. AG ¶¶ 19(a) and (c) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from 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.

I have considered mitigating condition AG ¶ 20(a). Applicant's financial woes culminated with his divorce that was concluded in 2018. That is not that long ago. His indebtedness, however, is recurring; it persists to this day. His debts are not mitigated under AG ¶ 20(a).

I have considered mitigating condition AG ¶ 20(b), which has two requirements. First, the conditions causing financial problems must have been "largely beyond" an applicant's control. Second, the applicant must have "acted responsibly" under the adverse circumstances he confronted.

Applicant's indebtedness was incurred by his then wife, while he was in the Navy on deployment. Using his power of attorney, she opened accounts that he was unaware of. He did not learn of those then delinquent accounts until he applied for a loan and was told how low his credit score was. In the divorce case, he sought to have his wife held accountable for those debts. The court, however, ruled that he was responsible for all the

debts. The conditions that caused his indebtedness were “largely” – if not wholly – beyond his control. I find no nexus between his June 2010 favorable clearance determination with a caution about his debts and the financial circumstances that caused his current problems. The first requirement of AG ¶ 20(b) is satisfied.

The second requirement of AG ¶ 20(b) is that Applicant “acted responsibly” under his circumstances. Here, in late 2021 before the SOR was issued, he contacted nine creditors to ask for settlement terms to resolve his debts. Those creditors refused, instead demanding lump sum payments. Those creditors are noted in the June 8, 2022 SOR. He received the SOR sometime in June or July 2022. By the time of his undated Answer (likely sometime in July 2022), he had retained XYZ Law firm to work with him and his creditors to resolve nine of the SOR debts. From April 2022 through July 2022 he paid XYZ Law firm \$109.95 per month for its services. By the time he had made those payments, the firm had not resolved any SOR debts. Applicant was dissatisfied and discontinued XYZ’s services.

Nevertheless, during the week of the hearing, Applicant again contacted the SOR creditors asking for settlement terms, other than lump sum payments. Only one was willing to allow him to make installment payments. After the hearing, he timely submitted AE B, which documented 12 postdated, pre-authorized, and automatically withdrawn monthly payments of \$121.52 to resolve SOR ¶ 1.g. In sum, he made efforts to resolve his debts after his PSI and before the SOR was issued. And he continued up to the hearing day. Given the uncooperative position of his creditors, he plans to pay off each account when he has the money to pay the account in full. Under the circumstances, that seems like a reasonable plan. I find that he has acted responsibly in confronting his financial situation, and his debts are mitigated by AG ¶ 20(b). AG ¶ 20(d) applies for similar reasons.

The Appeal Board has held that it is not necessary to pay off all the debts alleged in the SOR, nor is it required that they be paid off in any particular way. What is required is only that an Applicant have a reasonable plan to pay off his debts, and has taken some steps towards execution of that plan. See, e.g., ISCR Case No. 09-08462 at 3 (App. Bd. May 3, 2011). I find that the record evidence supports this conclusion here.

### **Whole-Person Concept**

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

I have specifically considered the favorable testimony of Ms. ABC about Applicant’s character. She has known him for over 23 years, beginning when they served together in the Navy and now as co-workers. In the Navy, she was in a subordinate

position to him. Thanks, however, to a diversity program, they were paired as a team and found they had much in common. A friendship flourished that continues to this day. They know each other's families closely and have shared the ups and downs of life. As civilians, they have worked for the same defense contractor since 2016. Now she is his supervisor. She praised him for having the "utmost honesty and integrity."

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	FOR APPLICANT
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Subparagraphs 1.a-1.m:	For Applicant
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### **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

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Philip J. Katauskas  
Administrative Judge