



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00250
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

10/31/2023

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

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On February 9, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) effective on June 8, 2017.

Applicant answered the SOR on March 29, 2023, and he requested a hearing. He was initially notified of the hearing date by my email dated July 18, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2023, and the hearing was convened as scheduled on August 7, 2023. The Government offered exhibits (GE) 1-4, which were admitted into evidence without

objection. The Government's exhibit list was identified as HE I and its disclosure letter to Applicant was marked as HE II. Applicant testified but did not offer any documents into evidence. DOHA received the hearing transcript (Tr.) on August 17, 2023.

### **Findings of Fact**

In his SOR answer, Applicant admitted all the allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He began working at his present job in approximately June 2023. He works in the information technology (IT) career field. He has an associate degree. He is married for the second time and has three children from this marriage. (Tr. 6, 12-13, 27, 30; GE 1)

The SOR alleged Applicant owed nine delinquent accounts (personal loans, credit cards, delinquencies from vehicle repossessions, and consumer debts) totaling approximately \$85,000. The debts are established by credit reports from August 2022 and April 2023; Appellant's SOR admissions; and his hearing testimony. (SOR ¶¶ 1.a-1.i). (Tr. 19, 32, 39-44; GE 3-4; SOR answer)

Applicant admitted all the SOR debts during his testimony. He also admitted that he has not made any payments toward any of the debts as of the date of the hearing. He stated that the reason for his financial difficulties was because his wife was involved in a near-fatal car accident in November 2016. Before the accident, she had a full-time job, but afterward she was unable to work. She collected short-term disability payments from her employer for some time, but eventually had to utilize the Family and Medical Leave Act (FMLA). This put her in a non-pay status for an extended period of time. She has never gone back to work, preferring instead to be a stay-at-home mother with their children. (Tr. 13, 15, 31-32, 35-36, 39-44)

Because of the accident, Applicant's wife incurred approximately \$100,000 worth of medical bills not covered by insurance. In order to support his household without his wife's income, Applicant began using credit cards and obtaining personal loans. He was unable to make regular payments on them so he consulted with a bankruptcy attorney. He was advised by the attorney to stop paying his creditors and file for bankruptcy, preferably under Chapter 13. He stopped paying his debts in early 2018. Applicant testified because of the pandemic and delays by his attorney, a bankruptcy petition was never filed. Upon further contact with his bankruptcy attorney, it was suggested that since many of the debts had "fallen off" his credit report because of being over aged, that Applicant could continue with this course of action. A bankruptcy filing would resurrect the delinquent debts and Applicant chose not to have that happen. (Tr. 16-17; GE 4)

In August 2017, Applicant sold his home and received proceeds of approximately \$35,000. He used these proceeds to pay non-SOR loans from family and friends that totaled approximately \$40,000. None of these proceeds were used to pay any SOR

debt. At some point, Applicant's wife inherited approximately \$35,000 from her father's estate. None of these funds were used to pay any SOR debt. In May 2019, Applicant's wife settled the lawsuit that resulted from her car accident. She received approximately \$100,000 from the settlement. Applicant testified that the entire amount went to pay their attorney and to the unpaid medical bills. No supporting documentation was offered. None of this amount went to pay any SOR debt. (Tr. 14-15, 33, 35-36, 46-49)

Applicant testified that the credit cards and lines of credit taken out were supposed to be in his wife's name only. His credit reports show that he is named either as a joint debtor or the individual debtor on all the SOR debts. He failed to present documentary evidence to the contrary. (Tr. 53; GE 3-4)

Applicant's current financial picture shows that he has approximately \$600 as a monthly residual after paying his current expenses. He does not use a formal budget. He has approximately \$9,000 in savings and \$30,000 in a retirement account. He and his family live in his deceased mother's house, which is owned by a family trust. He does not have a monthly home or rent payment. He owns two cars that are fully paid. He presented no evidence of financial counseling, other than his discussion with his bankruptcy attorney. (Tr. 36-37, 48, 51)

### **Policies**

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.

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 that an 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.

Section 7 of EO 10865 provides that 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**

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant accumulated numerous delinquent debts, which remain unpaid or unresolved. He made a conscious decision not to file for bankruptcy to avoid resurrecting charged-off debt. I find all of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;
- (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.

Applicant's debts are recent and he admitted that he has not paid or resolved them. He failed to produce evidence showing that recurrence of his financial problems is unlikely. He made a conscious choice not to address his delinquent debts, rather he decided to allow them to age off his credit report. While this decision may be a sound financial decision, it does nothing to show his reliability, trustworthiness, and good judgment for security worthiness purposes. AG ¶ 20(a) is not applicable.

Applicant's wife's unfortunate car accident and resulting medical debts without insurance are conditions beyond his control. However, by failing to address his SOR debts in any manner he has not acted responsibly. He admittedly weighed the benefit of pursuing a Chapter 13 bankruptcy, but decided against this action when he learned this would resurrect some of his aged-off delinquent accounts. He pursued no other payment options. AG ¶ 20(b) is not applicable.

Aside from his contact with a bankruptcy attorney, Applicant did not present evidence of financial counseling. He failed to establish good-faith efforts to resolve his debts. Given the unpaid status of his debts and the lack of a responsible plan to resolve them, Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply. Applicant admitted the SOR debts and did not document that the accounts were solely his wife's responsibility. AG ¶ 20(e) does not apply.

### **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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's wife's car accident, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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

Subparagraphs 1.a-1.i:                   Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge