



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00544
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2023

**Decision**

GARCIA, Candace Le’i, Administrative Judge:

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

**Statement of the Case**

On April 26, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on July 5, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on April 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on May 5, 2023, scheduling the matter for a video teleconference (VTC) hearing on June 13, 2023.

I convened the hearing as scheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 5 without objection. Applicant testified, and he did not call any witnesses or present any documentation. He declined the opportunity to keep the record

open to submit documentation. DOHA received the hearing transcript (Tr.) on June 27, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations. He is 42 years old, married, and he has four children, only one of whom is a minor. He graduated from high school in 2008 and attended some college but did not earn a degree. He has owned his home since December 2021. (Answer; Tr. at 6, 23-24, 49; GE 1)

Applicant has worked primarily as a shipfitter for various DOD contractors since approximately 2008. He was unemployed from January 2016 to May 2016 and May to June 2017, due to layoffs because of a lack of work. He has worked as a general foreman for his current employer since March 2020. He has never held a security clearance. (Tr. at 5, 7-9, 24-32; GE 1-2)

The SOR alleged that Applicant had 3 delinquent consumer debts, totaling \$61,858. SOR ¶ 1.a is a credit card in collection for \$15,922, and SOR ¶¶ 1.b-1.c are charged-off credit cards for \$29,740 and \$16,196, respectively. The SOR allegations are established by his admissions in his Answer; his June 2020 security clearance application (SCA); his July 2021 response to financial interrogatories; and credit bureau reports from August 2020 and March 2022. (Answer; Tr. at 24-32; GE 1-4)

Applicant attributes his delinquent debts to his periods of unemployment and minimal income. In around 2007, he used the credit cards in SOR ¶¶ 1.a-1.c to pay for \$40,000 of training to be a real estate investor. The training taught him “how to flip properties and buy and hold wholesale . . . .” He made monthly payments on the credit cards until he became unemployed. He also used the credit cards to pay for his family’s daily living expenses when he was unemployed. During his periods of unemployment, his spouse also worked only part time. (Tr. at 24-32, 35-39, 44-47; GE 1-2)

Applicant contacted each of the creditors when he lost his job in 2016. He attempted to lower his monthly payments until he was re-employed, but the creditors denied his request. When the creditors later offered him lower monthly payments, he was still unemployed. When employed, he earned approximately \$50,000 annually from 2012 to 2017; \$70,000 annually from 2017 to 2019; \$55,000 annually from 2019 to 2020; and \$87,000 annually since March 2020. His spouse, who has worked full time as a dental hygienist since 2018, earned \$60,000 annually. (Tr. at 24-32, 35-39, 44-46, 52-54; GE 1-2)

As of the date of the hearing, Applicant had not made any payments toward the SOR debts. He had to pay for two other credit cards, and he also paid approximately \$15,000 total in taxes to the IRS from around 2017 to 2020. As of the date of the hearing, he did not owe delinquent taxes to the IRS. He and his spouse also took out two loans in 2021, totaling \$38,000, to renovate their home. His monthly payments for the loans were \$756 and \$275, respectively. Once he paid these loans, he intended to pay the SOR debts. (Tr. at 39-44, 47-54)

Applicant and his spouse jointly manage their household finances, and they utilize a budget to do so. He stated that their monthly household net income was approximately \$7,500. After paying their monthly household expenses, which included their \$2,053 mortgage and the \$1,031 payment toward their two loans, he estimated that they had a monthly net remainder of \$400. His budget did not include payments to any of the SOR debts. He has not received credit counseling. A June 2023 credit report reflects that he does not have any delinquent debts. (Tr. at 49-52; GE 2, 5)

### **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 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(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."

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 Exec. Or. 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 Exec. Or. 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 has a history of not paying his debts. AG ¶¶ 19(c) and 19(c) are established.

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.

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. While Applicant intends to resolve the SOR debts, he had not yet taken any steps toward doing so as of the date of the hearing. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do 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 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that 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.c:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge