



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01531
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Troy Nussbaum, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2023

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 12, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided an undated response to the SOR (Answer) in which he requested a hearing before an administrative judge. The case was assigned to me on August 23, 2023.

At Applicant’s request and without objection, I continued the original hearing date. The hearing was convened as rescheduled on November 14, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 4 over Applicant’s objection. Applicant testified at the hearing but did not present documents. At his request, I left the record open until December 5, 2023, to provide an opportunity for the parties to submit post-hearing documents. The Government timely submitted GE 5, which I admitted without objection. Applicant timely submitted Applicant Exhibit (AE) A, which I also

admitted without objection. I received a transcript (Tr.) of the hearing on November 21, 2023.

### **Findings of Fact**

Applicant is a 30-year-old employee of a government contractor for whom he has worked since August 2019. He earned a high school diploma in 2012. He is currently taking undergraduate courses. He will earn an associate degree in December 2023 and is on track to earn a bachelor's degree in June 2024. He was married from 2014 until a divorce in 2018. He has resided with a cohabitant since October 2019. He has three children, ages nine, six, and three. His two older children are from his marriage. He and his cohabitant are the parents of his youngest child. He enlisted in the Army in 2013 and was honorably discharged in 2017. He has held a security clearance since 2013. (Tr. 18-21, 27-28, 35, 38-43; GE 1)

In the SOR, the Government alleged Applicant's seven delinquent financial accounts totaling approximately \$32,000. It also alleged that he had a delinquent mortgage account that was foreclosed in 2019 (SOR ¶ 1.d). These delinquent accounts consist of a credit card (SOR ¶ 1.a), an auto loan (SOR ¶ 1.b), a medical debt (SOR ¶ 1.c), telecommunications debts (SOR ¶¶ 1.e and 1.g), and a cleaning fee from a residential lease (SOR ¶ 1.f). He admitted the SOR allegations in SOR ¶¶ 1.b, 1.c, and 1.d, but denied the rest because he claimed he had resolved those accounts. His admissions are adopted as findings of fact. All the SOR allegations are established by his admissions and the Government's 2021, 2022, and 2023 credit reports. (Answer; GE 2-5)

Except for the foreclosed mortgage in SOR ¶ 1.d, between 2022 and the beginning of 2023, Applicant resolved all the accounts in the SOR. He fell behind on all the SOR accounts in about 2018 because of his divorce, underemployment, and unemployment. He also had health issues that contributed to his financial issues and was recently diagnosed with multiple sclerosis (MS). In about 2022, after moving to a location with a lower cost of living, finding gainful employment, having his military disability payment markedly increase, and after his divorce and child custody issues were largely behind him, he contacted creditors for the debts in SOR ¶¶ 1.a through 1.c and 1.e through 1.g. He made payment arrangements with the creditors and satisfied these debts. For the debts in SOR ¶¶ 1.f and 1.g, he paid approximately the full balance. For the other SOR debts, he settled them for a reduced amount. I observed his demeanor while he testified and found his testimony, including his statements about the resolution of his SOR debts, to be credible. He also provided documentary corroboration of the resolution of some of these debts. (Tr. 18-21, 28-34, 40-45, 50-67; Answer; GE 2-5)

With respect to his mortgage foreclosure in SOR ¶ 1.d, when Applicant realized he could not afford to make his monthly payments because of his divorce, he hired a company to advocate on his behalf with the mortgage company. However, this company's efforts were unsuccessful. He made the difficult decision to move to a location with a lower cost of living so he could pay for his family's basic needs and allowed the marital home mortgage to be foreclosed. The foreclosure sale of the home

satisfied the underlying mortgage, and he no longer owes money to the mortgage holder. (Tr 47-50; Answer; GE 2-5)

Since he started his current job, Applicant has earned about \$72,500, annually. He also receives about \$2,600 in monthly military disability benefits. He has earned a bonus every year thus far at work. He and his cohabitant, who also works for a government contractor, share household expenses. Since 2015, he has been a member of a self-improvement volunteer association. He takes college courses while working full time, and coaches a high school wrestling team, for which he earns a stipend of \$5,000, annually. While he was in the Army, he earned three Army achievement medals and two certificates of achievement. He testified that he is able to pay his bills on time and that he had about \$6,000 combined in his two checking accounts. He currently has no delinquent financial accounts. (Tr. 27-28, 34-40, 62-63, 65-67)

### **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 within DOD 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’s seven delinquent consumer accounts totaling approximately \$32,000 were delinquent for several years. In 2019, he also had a foreclosed mortgage account. The above disqualifying conditions 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; and

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

Applicant's delinquencies were caused by divorce, underemployment, unemployment, and health issues. These conditions were largely beyond his control. In response, he acted responsibly by contacting creditors, making payment arrangements, and complying with those arrangements. He also tried to work with the mortgage holder of his marital home before ultimately allowing the account to go to foreclosure, where the sale of the marital home resolved the mortgage. He started making some of these payment arrangements prior to receiving the SOR. He contacted creditors after he had enough money to pay the SOR debts. He has provided sufficient evidence that his efforts to repay overdue creditors were made in good faith. Given his current financial situation, including his income and savings, as well as the fact that he has no delinquent debts, I find that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. All the above mitigating conditions apply. The financial considerations security concerns are mitigated.

### **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. I have also considered his good work performance, his continuing effort to better himself through education, his volunteer activities, and his honorable military service.

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Benjamin R. Dorsey  
Administrative Judge