



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



In the matter of: )  
)  
) ISCR Case No. 22-02540  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Michael Work, Personal Representative

12/20/2023

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the financial considerations and criminal conduct security concerns. National security eligibility for access to classified information is granted.

**History of Case**

Applicant submitted a security clearance application (SCA) on December 14, 2021. On February 15, 2023, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline J (criminal conduct). Applicant answered the SOR on April 12, 2023, and he elected to have a decision based upon the written material. (Answer) The Government chose, in a timely manner, to convert the case to a hearing on April 26, 2023. The case was assigned to me on May 5, 2023. On June 22, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 11, 2023.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the Department Counsel’s (DC) May 1, 2023 letter, notifying Applicant it was

electing to convert the case to a hearing, as Hearing Exhibit (HE) I; my June 21, 2023 case management order as HE II; DC's May 1, 2023 discovery letter as HE III; and DC's exhibit list as HE IV. Government Exhibits (GE) 1 through 9 and Applicant Exhibits (AE) A through E were admitted without objection, and Applicant testified. GE 10, which was marked for identification but not offered by DC, is included in the file; however, I did not consider it in reaching my determination. Additionally, AE A through E were included with Applicant's Answer. DOHA received the transcript (Tr.) on July 20, 2023. At the hearing, per Applicant's request, I held the record open until July 20, 2023, to allow him to submit additional documentation. He timely submitted documentation that I marked as AE F through Y, which I admitted without objection. I also marked an exhibit list he submitted as HE V, and the record closed.

### **Findings of Fact**

Applicant is 54 years old. He has been married to his second wife since 2007. He was married to his first wife from 1991 until 2002 when they divorced, and they have two adult sons who are financially independent and serving in the U.S. military. In December 2019, he received a Bachelor of Science in business administration and a certificate in entrepreneurship. He has worked as a secured communications analyst for a DOD contractor since December 2022. He enlisted in the United States Navy in 1988 as a Seabee, served one year in the Reserves, and four years on active duty. He left active duty in January 1993, returned to active duty in June 1996, and continuously served until he honorably retired in 2012 as a first-class petty officer with an 80 percent disability rating from the Department of Veterans Affairs (VA). As a Cryptologic Technical Technician (CTT), he held a top secret with sensitive compartmented information (TS/SCI) security clearance for sixteen years from 1996 until 2012. He does not currently have a security clearance. (Tr. 12-13, 26-31, 33-36; GE 1; GE 2; AE Y)

In Applicant's Answer, he admitted all the debts except for SOR ¶ 1.h; however, all his positive responses were qualified by language that his debts had been settled, paid in full, or a settlement had been reached and they would be paid off shortly. Therefore, I am considering these answers to be de facto denials. He also denied the two Guideline J allegations and indicated they were dismissed. (Answer; AE I)

The debt alleged in SOR ¶ 1.a was a credit card account opened in 2018 and charged off in 2021. A judgment was filed against Applicant in 2022 in the amount of \$22,277. At the hearing, he testified he entered into a payment agreement with the creditor in September 2022 to make monthly payments of \$376, and his wife was negotiating with the creditor to settle the debt for a lump-sum payment. His April 2023 credit bureau report (CBR) reflects a balance of \$20,168, indicating he did make payments. After the hearing, he provided documentation from the creditor demonstrating he made a \$10,000 payment between April 10, 2023 and May 2, 2023, and settled this debt. It is resolved. (Tr. 39-47; GE 2 at 9; GE 3 at 2; GE 4 at 2; GE 5 at 2; GE 6 at 5; AE J)

The debt alleged in SOR ¶ 1.b was a credit card account opened in 2017 and charged off in 2021, in the amount of \$19,547. Applicant testified he made a payment of \$3,000 on September 30, 2022; a payment of \$2,500 on October 15, 2022; and a payment of \$5,500 on November 15, 2022. After the hearing, he provided documentation from the creditor dated July 13, 2023. It did not include information regarding the date of settlement or the amount he paid, but it reflected that this debt was resolved. (Tr. 47-48; GE 2 at 9; GE 3 at 2; GE 4 at 2; GE 5 at 2; GE 6 at 7; AE K)

The debt alleged in SOR ¶ 1.c was a credit card account opened in 2013 and charged off in 2021, in the amount of \$14,195. Applicant testified he resolved this debt with a lump-sum payment of \$1,839 in the fall of 2022. After the hearing, he provided documentation from the creditor demonstrating he settled this debt on September 7, 2022. It is resolved. (Tr. 50-53, 57; GE 2 at 9; GE 3 at 3; GE 4 at 3; GE 5 at 2; GE 6 at 8; AE L; AE M)

The debt alleged in SOR ¶ 1.d was a credit card account opened in 2018 and charged off in 2021, in the amount of \$6,456. Applicant testified he settled this debt with a lump-sum payment of \$900 in the fall of 2022. After the hearing, he provided documentation from the creditor demonstrating he resolved this debt. (Tr. 54-55; GE 2 at 9; GE 3 at 4; GE 4 at 3; GE 5 at 3; GE 6 at 7; AE M)

The debt alleged in SOR ¶ 1.e was a medical debt placed for collection in 2019, in the amount of \$55. Applicant testified he paid this debt. After the hearing, he provided a personal statement indicating he paid this debt on September 12, 2022, and he confirmed with a company representative on July 13, 2023, that the debt was paid in full on the date stated above. He had not received an email confirmation of his payment by close of the record; however, this debt does not appear on his most recent CBR. It is resolved. (Tr. 57; GE 2 at 7; GE 4 at 5; GE 5 at 4; AE N)

The debt alleged in SOR ¶ 1.f was a credit card opened in 2008 and charged off in 2021, in the amount of \$3,750. After the hearing, he provided documentation from the creditor demonstrating he completed his settlement of this debt with a payment of \$1,736.45 on April 17, 2023. It does not appear on his most recent CBR, and it is resolved. (Tr. 58-60; GE 2 at 8; GE 3 at 5; GE 4 at 4; GE 5 at 3; AE O)

The debt alleged in SOR ¶ 1.g was a credit card opened in 2006 and charged off in 2021, in the amount of \$3,421. After the hearing, Applicant provided documentation from the creditor demonstrating he settled this debt on November 30, 2022, with a payment of \$1,600. He also provided proof of satisfaction of a judgment that had been entered against him for this debt. It no longer appears on his credit report and is resolved. (Tr. 61-63; GE 2 at 7; GE 3 at 5; GE 4 at 5; GE 5 at 3; AE P)

The debt alleged in SOR ¶ 1.h was a judgment filed against Applicant in 2022, in the amount of \$3,986.14. In his Answer, he provided documentation demonstrating he resolved this debt in full on April 6, 2023. He testified this debt was the only debt related to the restaurant discussed below. (Tr. 65-69; AE C; AE Q)

The debt alleged in SOR ¶ 1.i was a credit card opened in 2013, and a judgment was filed against Applicant in the amount of \$17,806 in 2020. In his Answer, he provided documentation demonstrating that he entered into an agreement in April 2023 to make a one-time payment of \$13,404 to settle this debt. After the hearing, he provided additional documentation proving payment. This debt is resolved. (Tr. 69-70; AE D; AE E; AE R)

Applicant attributed his financial problems to his wife's four bouts with cancer, his under and unemployment, and a failed business. His wife has been unable to work since approximately 2018. In addition to her lost income, costs related to uncovered transplant medications, chemotherapy, and travel for her treatment affected their finances. Her latest illness also coincided with the period he returned to school full time (2017 to 2019). They relied on his education benefits from his military service (GI Bill) and his Navy retirement and VA disability pay. However, they had insufficient income for their needs, and they used credit cards to support themselves and pay for her necessary medications. (Tr. 18-19, 36-39, 56-58; GE 2 at 3; GE 3 at 9; AE Y)

Applicant was unemployed from June 2017 to December 2019, while he was a full-time student, and from December 2019 until March 2020, when he was preparing to open a restaurant, with his parents' financial support. Due to the Covid-19 pandemic he was unable to make the business successful and despite multiple attempts, he shut it down in October 2021. He was subsequently unemployed until January 2022. Additionally, since retiring from the Navy, he struggled to find a position in his field, because he lacked a college degree. (Tr. 27-28, 41, 56, 63-66, 76-78; GE 1 at 10; GE 2 at 2-3)

Applicant does not have any new delinquent debt, and he provided documentation demonstrating he resolved several large unalleged debts. When he and his wife moved from State A to State B in November 2021, they moved in with his parents to reduce their expenses and save money. They were subsequently able to make payments and resolve some of their debts in the fall of 2022. In April 2023, he and his wife sold their home in State A and used the proceeds to resolve their remaining debts. (Tr. 30, 45, 48-49, 63-64; GE 2: GE 5; GE 6; AE W)

Applicant and his wife drive a 2009 vehicle and a 2012 vehicle, both of which were paid off over ten years ago. As of the hearing date, he nets a monthly income of \$6,000 from his civilian position (\$105,000 salary) and approximately \$2,076 from his combined retirement and disability pay. According to his October 2022 budget, he has a monthly net remainder of almost \$3,000. He also had \$11,000 in combined checking and savings

and \$22,000 in an individual retirement annuity (IRA). (Tr. 31, 39, 70, 119-120; GE 2 at 10)

In December 2019, Applicant and his wife were arrested and charged with larceny of government property after shopping at a Navy exchange. They purchased approximately \$200 worth of merchandise, such as toilet paper and sheets, but failed to pay for three items. These smaller items, body wash, mascara, and a lip pencil, were in the upper basket of the shopping cart under his wife's purse, and they were worth \$19.07. As they were leaving the store, Applicant and his wife were apprehended by loss prevention. After they were confronted, they apologized, and offered to pay for the items. They did not intend to steal these items. The charges were ultimately dismissed. (Tr. 82-90; GE 2 at 5; GE 7; GE 8; AE S)

In June 2021, Applicant was arrested and charged with assault and battery for an incident that occurred in October 2020. His original business partner for the restaurant was using money from the business for his personal use. When Applicant attempted to take paperwork from the restaurant regarding this issue, his partner grabbed him from behind, and tried to take the paperwork from him. Applicant held his partner down, to defend himself, but did not hurt him. Applicant left the restaurant with the paperwork and filed a police report the same day. In June 2021, his former partner filed charges against him, but they were dismissed in October 2021. (Tr. 91-93; AE T)

Applicant was arrested in November 2002 for assault and battery of an ex-spouse. The case was Nolle Prosequi. The incident was not alleged in the SOR and will not be considered as disqualifying; however, it may be considered in determining what mitigating conditions are applicable and in the whole-person analysis. (GE 2; GE 9; AE U)

Applicant received the following awards and decorations while serving on active duty in the Navy: Army Commendation Medal; Joint Meritorious Unit Award; Navy Unit Commendation Medal; Navy "E" Ribbon; Navy Good Conduct Medal (5); National Defense Service Medal (2); Southwest Asia Service Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Medal; Navy Sea Service Deployment Ribbon (5); Navy Sharpshooter Rifle Medal; and Navy Sharpshooter Pistol Medal. During his service, he deployed several times, including to Iraq, as evidenced by his awards and decorations. (Tr. 33, 46, 108; GE 2 at 10; AE X)

## **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 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 AG ¶ 2, describing 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."

According to 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 clearance 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 Concerns**

The concern under Guideline F (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 . . . .

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.

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 experienced personal financial issues related in large part to his wife's cancer (her loss of income and additional expenses for treatments), and personal periods of under and unemployment. After retiring from the Navy in 2012 as a CTT1, he was unable to find a position in his field because he lacked a college degree. While he was in school full time to obtain a degree, his wife became ill again, and their income was insufficient. These were circumstances that were not within his control. Just before the Covid-19 pandemic started, he attempted to open a restaurant; however, he ultimately had to close it in October 2021. After obtaining a position in his field in January 2022, he

was able to save money by living with his parents. In the fall of 2022, he made payments toward and resolved several of the alleged delinquent debts. After he sold his home in April 2023, he used the proceeds to resolve the remaining alleged debts. Additionally, he also resolved several unalleged debts prior to the issuance of the SOR, demonstrating a good-faith effort. The record evidence reflects that the debts alleged in the SOR are resolved.

Applicant pays his current financial obligations and has no new delinquent debt. He is willing and able to live within his means, which is reflected in the testimonial and documentary evidence. Mitigation was established under AG ¶¶ 20(a), 20(b), and 20(d).

### **Guideline J: Criminal Conduct**

AG ¶ 30 expresses the security concerns pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The record evidence did not establish sufficient evidence that Applicant's criminal charges were disqualifying condition under AG ¶ 31:

(a) pattern of minor offenses, any of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The two alleged incidents do not establish a pattern of behavior or offenses. As of the hearing date, it was almost three years since the last underlying conduct occurred. Together, the two incidents do not establish doubt regarding Applicant's judgment, reliability, or trustworthiness.

There is insufficient evidence in the record regarding the October 2020 event to determine if the complaining witness made a credible allegation. Applicant testified he was the one who was assaulted; the charges were made approximately eight months after the incident; and dismissed shortly thereafter.

The circumstances surrounding the 2019 incident and Applicant's explanation are with merit. He and his wife purchased \$200 worth of merchandise and failed to pay for three smaller items, totaling \$19. They forgot these items were in the upper basket under his wife's purse in the shopping cart. It is commonplace for shoppers to place smaller items in the upper basket area of a cart to prevent them from falling through the slats of the larger lower area. The Navy Exchange did not accept their explanation and charges



were filed against them, but the record does not establish a credible accusation. Their behavior reflects thoughtless or absent-mindedness, not criminal intent, and the charges were ultimately dismissed.

The remaining disqualifying conditions are not applicable in this case. There is insufficient evidence in the record to establish Applicant engaged in criminal conduct. AG ¶¶ 31(a) and 31(b) are not established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guidelines at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and J and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

## **Conclusion**

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

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CAROLINE E. HEINTZELMAN  
Administrative Judge