



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



In the matter of:	)	
	)	
	)	USAF-M-Case No. 23-00003-R
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: *Pro se*

02/24/2023

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**Decision**

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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 23, 2022, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) 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; Department of Defense (DOD) Manual 5200.02, *Procedures for the DOD Personnel Security Program (PSP)*, effective on April 3, 2017 (DOD Manual 5200.02); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

It is unclear from the record whether Applicant submitted a response to the SOR. He submitted Applicant Exhibit (AE) B, which was admitted into evidence without objection, which references the SOR, but also stated an incorrect date for the SOR.

Regardless, Applicant did not specifically admit or deny the SOR allegations. However, from a reasonable reading of AE B, one can infer that Applicant admitted the allegations. On October 14, 2022, the DOD CAF revoked Applicant's security clearance. On January 19, 2023, Applicant requested referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked under the provisions of Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960) and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. (Hearing Exhibit (HE) I)

The case was assigned to me on January 18, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 19, 2023, and the hearing was held as scheduled on February 9, 2023. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. The Government's exhibit list was marked as HE II. Applicant testified, called one witness, and offered AE A (a prior submission in response to a request for information from the DOD CAF), which was admitted without objection, and AE B, as noted above. The record was held open until February 16, 2023, to allow Applicant to provide additional evidence. He timely submitted AE C-F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 17, 2023.

### **Procedural Issues**

On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum that provided that any individual whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum, shall be afforded the opportunity to pursue the DOHA hearing and appeal process set forth in DoD Directive 5220.6. On October 14, 2022, DoD Consolidated Adjudication Services denied or revoked Applicant's eligibility for access to classified information and he appealed that denial or revocation under the provisions of DoDM 5200.02. As a result of Under Secretary Moultrie's Memo, Applicant was given the opportunity to receive the process set forth in DoD Directive 5220.6, and he elected that process. (Tr. 5; HE I)

### **Findings of Fact**

After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 36-year-old technical sergeant in the U.S. Air Force (USAF). He enlisted in the USAF in 2009. He deployed in 2011 and 2015. He is a personalist. He holds an associate's degree. He divorced in 2021 and has two children, ages 14 and 7. Because he has joint custody, he is not required to pay child support. He pays \$250 monthly for braces for his oldest child. He also paid \$750 upfront for the braces. He volunteers as a youth basketball coach. (Tr. 34-35; GE 1)

The SOR alleged nine delinquent accounts (for clarity, I have specifically numbered the SOR debts from 1.a to 1.i, so I can make specific findings for each. They

were originally stated in narrative form). The charged-off and collection delinquencies are from credit cards and other consumer debts totaling approximately \$53,674. (SOR ¶¶ 1.a - 1.i) The debts are established by credit reports from April 2021 and January 2023; and information gathered from an April 2021 continuous evaluation incident report. (GE 2-4)

Applicant stated that his financial difficulties began in 2016, when he moved to his current base of assignment. His wife was not working after they moved, although she was employed previously. They did not adjust to having one income and overextended their spending. When they divorced in 2021, additional financial costs accrued. He had to find a separate place to live. (Tr. 35-38)

The status of the SOR debts is as follows:

**SOR ¶ 1.a-\$16,805.** This is a charged-off credit card. The debt became delinquent in September 2019. Applicant's recent credit report shows that the debt balance has decreased to approximately \$9,800 and it shows the last payment date as May 2022. He documented payments made from April 2021 to September 2021. He intends to start making payments again in March 2023. This debt is being resolved. (Tr. 39-40; GE 3; AE A)

**SOR ¶ 1.b-\$16,732.** This is a charged-off credit card. The debt became delinquent in April 2019. Applicant admitted this debt, that he has done nothing to resolve it, and it remains unpaid. (Tr. 40; GE 3)

**SOR ¶ 1.c-\$7,357.** This is a charged-off credit card. The debt became delinquent in May 2019. Applicant admitted this debt, that he has done nothing to resolve it, and it remains unpaid. (Tr. 40-41; GE 3)

**SOR ¶ 1.d-\$940.** This is a consumer debt. The debt became delinquent in September 2019. Applicant admitted this debt, that he has done nothing to resolve it, and it remains unpaid. (Tr. 41; GE 3)

**SOR ¶ 1.e-\$1,059.** This is a credit card. The debt became delinquent in June 2019. Applicant admitted this debt. He documented making payments to pay this debt. His recent credit report shows a zero balance for this account. This debt is resolved. (Tr. 41 GE 2; AE C, F)

**SOR ¶ 1.f-\$4,407.** This is a charged-off credit card. The debt became delinquent in April 2019. Applicant admitted this debt and it remains unpaid. (Tr. 41-42; GE 3)

**SOR ¶ 1.g-\$3,210.** This is a charged-off credit card. The last payment date was October 2018. Applicant admitted this debt and it remains unpaid. (Tr. 42; GE 3)

**SOR ¶ 1.h-\$1,315.** This is a consumer debt. The debt became delinquent in July 2019. Applicant admitted this debt and it remains unpaid. (Tr. 42; GE 3)

**SOR ¶¶ 1.i-\$1,849.** This is a telecommunications debt. The debt became delinquent in April 2022. It was sold to a collection agency. Applicant admitted this debt, but he thought he resolved it. He did not provide documentation corroborating his assertion of payment. This debt is unresolved. (Tr. 42-43; GE 3)

Applicant provided an email, dated February 16, 2023, from a credit-repair law firm indicating the firm was hired to address “questionable negative items” on his credit report. There was no further information provided. (AE C, E)

Applicant provided a spreadsheet showing his current monthly budget. It shows a total monthly take-home income of \$5,480; total monthly expenses of \$5,160; leaving a monthly remainder of \$320. This budget does not account for making payments toward the remaining delinquent debts. (AE C-D)

Applicant offered the testimony of his first sergeant, senior master sergeant (SMS) C who has nearly 24 years in the Air Force. He works directly for a lieutenant general. SMS C has known Applicant for approximately two years. Although he has never supervised Applicant, he has trusted him to become the acting first sergeant when he is on leave or otherwise unavailable. Based upon his dealings with Applicant, he believes he is reliable, trustworthy, and exercises good judgment. He believes Applicant is an exceptional noncommissioned officer. He was aware of Applicant’s financial problems and referred him to an on-base support agency that provides financial counseling to airmen. SMS C did not know if Applicant followed up by implementing any financial advice received from this agency. (Tr. 25-28, 31)

### **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; and
  
- (c) a history of not meeting financial obligations.

Applicant has a history of financial difficulties dating back to 2018. Additionally, he incurred nine delinquent debts totaling approximately \$53,000. Seven of the debts remain unpaid. Applicant's testimony and credit reports establish the debts. I find both 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 because they are ongoing. Although he paid one debt and he is making payments toward a second debt, he failed to address the remaining debts, which comprise the majority of the overall debt amount. AG ¶ 20(a) is not applicable.

Applicant presented evidence that the debts were affected by circumstances beyond his control, namely, separation and divorce. However, he did not act responsibly concerning the debts when he failed to resolve them in a timely fashion. AG ¶ 20(b), therefore, has some application, but does not fully apply.

Applicant presented some evidence of financial counseling through an on-base agency and his recent engagement of a credit repair law firm. His track record to date does not support a good financial picture. He has had several years and the assistance of a financial counselor to address his debts, but he has largely failed to do so. Based upon his past history, there is no reason to believe that he will right his financial ship in

the future. While he did resolve one debt and is working on a second one, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not fully apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.a and 1.e. Applicant did not provide documentation to support his dispute of SOR ¶ 1.i. 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 guidelines 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 military service, including his two deployments, the testimony of his first sergeant, and his divorce. However, I also considered that he has not adequately addressed his delinquent debt. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For 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 and 1.e:

For Applicant

Subparagraphs: 1.b-1.d and 1.f-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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge