



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



In the matter of: )  
)  
) ISCR Case No. 23-00916  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro Se*

12/05/2023

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge

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

**Statement of the Case**

On June 12, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on July 6, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on August 16, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 22, 2023. He responded with a memorandum and three documents that I have marked Applicant Exhibits (AE) A through D and admitted in evidence without objection. The Government exhibits included in the FORM, which also contain the documents Applicant submitted in his response to the SOR, are admitted in evidence without objection.

**Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since June 2021. He has an associate degree that he earned in 2008 and a bachelor's degree that he earned in 2010. He is married with three children. (Items 3, 9)

Applicant has a history of financial problems, including a Chapter 7 bankruptcy case and delinquent debts. He filed a Chapter 7 bankruptcy case in September 2012. Under Schedule D, Creditors Holding Secured Claims, the petition listed a \$337 loan against his 401(k) retirement account. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed accounts totaling \$62,228. The deficiency balances on the loans for repossessed 2011 and 2012 vehicles made up about \$31,336 of that amount, and two student loans, which are usually not dischargeable, constituted about \$7,966 of the total. There were no priority unsecured claims. His dischargeable debts were discharged in December 2012. (Items 3-9)

Applicant attributed the bankruptcy to being young and spending lavishly on expensive items. His wife has a debilitating autoimmune disease and other medical issues that require expensive medication and treatments, and periodically prevent her from working. Notwithstanding the fresh start offered by the 2012 bankruptcy discharge, Applicant accrued additional debts that became delinquent. The SOR alleges the Chapter 7 bankruptcy case (SOR ¶ 1.h) and seven delinquent debts totaling about \$57,877 (SOR ¶¶ 1.a-1.g). Applicant admitted owing all of the debts at one time, but he stated that two of the debts were resolved through payment plans. (Items 3-5; AE A)

Applicant reported financial issues on a Questionnaire for National Security Positions (SF 86) that he submitted in June 2022. He wrote that he had about \$10,000 in unsecured debt. He indicated that it was "[n]ot fully resolved yet across the board, but I have reached out to the creditors/companies to satisfy the debts. Most of them will be satisfied/paid within the next 30-60 days." He discussed six of the seven SOR debts during his background interview in August 2022. It appears that one of the SOR debts (SOR ¶ 1.e) was not delinquent at the time of the interview. (Items 4, 5, 8, 9) The SOR debts are discussed below.

Applicant settled the \$4,225 defaulted loan (SOR ¶ 1.b) for \$1,131, which he paid in July 2023. He had delinquent debts of \$3,943 (SOR ¶ 1.c) and \$2,809 (SOR ¶ 1.d) owed to a furniture company. In January 2023, he settled the debts for \$1,093 and \$739, payable in increments. He completed the payments in May 2023 and resolved the debts. (Items 3, 6, 8, 9; AE A-D)

SOR ¶¶ 1.a and 1.g allege defaulted loans with balances of \$5,391 and \$11,078. These debts were reported as delinquent on the June 2022 and February 2023 credit reports. They have not been paid. (Items 3, 5, 6, 8, 9; AE A)

SOR ¶ 1.e alleges a charged-off auto loan of \$20,033. Applicant did not discuss this debt during his background interview because the June 2022 credit report did not list it as delinquent at the time. That credit report listed the loan as opened in May 2018, with payment terms of \$796 per month for 87 months. The high credit was \$35,607, and the balance was \$35,046. The loan was 60 days past due twice. The vehicle was

subsequently repossessed. The February 2022 credit report lists the balance as \$20,033. Applicant has not made any payments toward this debt. (Items 3, 5, 6, 8, 9; AE A)

Applicant has not made any payments toward the \$10,398 charged-off auto loan alleged in SOR ¶ 1.f. He told the background investigator in August 2022 that he would reach out to the creditor within 30 days to attempt to resolve the balance. (Items 3, 5, 6, 8, 9; AE A)

Applicant stated in his response to the FORM that his wife is once again out of work. He stated that his income "can provide the necessities and keep [them] afloat until she is able to hold employment again, but it will be difficult to pay the delinquent debts until she is back to work." He indicated that he planned to pay the debts and expected to have at least one of the accounts paid by the end of the year. (AE A)

### **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 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 has a history of financial problems, including a Chapter 7 bankruptcy case and delinquent debts. The above disqualifying conditions are applicable.

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.

Applicant's wife has a debilitating autoimmune disease and other medical issues that require expensive medication and treatments, and periodically prevent her from working. Those conditions are beyond his control. To receive the benefit of AG ¶ 20(b), Applicant must also prove that he acted responsibly under the circumstances.

Applicant admitted he was young and spent lavishly on expensive items before the Chapter 7 bankruptcy. That is borne out by the 2012 bankruptcy petition that reported he owed \$31,336 for the deficiency balances on the loans for repossessed 2011 and 2012 vehicles.

The bankruptcy discharge gave Applicant a fresh start and should have steered him in a different direction, but deficiency balances on the loans for two repossessed vehicles make up more than \$30,400 of the SOR debts, and the vehicle for the \$20,033 debt was apparently repossessed after his background interview. Applicant is credited with resolving three of the SOR debts with payments totaling about \$3,000, and those debts are mitigated. However, he still owes four debts with balances totaling about \$46,900. He stated that he intends to pay those debts. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his remaining debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the financial considerations mitigating conditions are applicable to his remaining debts.

### **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 about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant

### **Conclusion**

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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Edward W. Loughran  
Administrative Judge