



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01750
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mark D. Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

01/11/2023

**Decision**

LAFAYE, Gatha, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed and submitted a security clearance application (SCA) on November 29, 2021. On September 30, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on December 6, 2022, and requested a hearing before an administrative judge. The case was assigned to me on July 11, 2023. The hearing was convened as scheduled on September 14, 2023. Government Exhibits (GE)

1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted in evidence without objection.

### **Findings of Fact**

In Applicant's response to the SOR, he admitted all allegations (SOR ¶¶ 1.a - 1.h) except the allegation in SOR ¶ 1.e, which he denied. His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old employee of a defense contractor. He has worked as a full-time management analyst with multiple defense contractors supporting the same government office since August 2009. He testified he earns about \$106,000 per year, and that he anticipates a pay raise in March 2024. From November 2019 to about May 2021, he worked as a part-time salesman with a non-defense employer. He earned about \$9 per hour and worked an estimated 12 hours per week. He stated he left the part-time position due to the COVID-19 pandemic. He also stated he received a 401(k) plan through this part-time employer, but that he was unaware of the value of the plan. (GEs 1 and 4; Tr. 27-29)

Applicant earned a bachelor's degree in May 2001. Though he has never been married, he has resided with a cohabitant girlfriend since about March 2019. He has a 16-year-old son who resides with him. He also testified he has a second minor child, about seven years old, whom he supports financially but does not maintain physical contact with. He volunteered that he financially supports his second child through court-ordered child support payments of \$441 every two weeks. (GEs 1 and 4; Tr. 19, 62-63)

Applicant testified he pays \$2,519 per month for rent, and that he neither receives nor provides financial support to anyone, other than the child support payments discussed above. He testified his cohabitant girlfriend is an accountant employed by a major company. He testified she helps him with groceries and electricity expenses. (Tr. 62-64) He also testified she paid for their vacation to the Bahamas in August 2023 in celebration of his birthday. (Tr. at 66)

In response to questions in his November 2021 SCA, Applicant denied having any financial issues. (GE 1 pp. 31-32) He also denied having any delinquent debts when initially asked by DOD investigators during his May 2022 interview. (GE 4 at 2) It was only after investigators confronted him with specific debts that he agreed and discussed his delinquent debts with them. He informed investigators that he was a private person, and that only his mother knew about his delinquent debts. (GE 4 pp. 3, 6) During the hearing, Applicant disclosed he owed the federal government about \$4,500 for 2019 income taxes, but stated he cleared the debt and no longer owes it. (Tr. at 64) Delinquent income taxes were not alleged in the SOR.

Applicant has not sought professional financial counseling services or advice, but stated he discussed financial matters informally with acquaintances because he desired

to buy a home. (Tr. at 66) He disclosed he was granted eligibility for access to classified or sensitive information in about April 2004. He currently holds a secret-level security clearance. (GE 1 at 30; Tr. at 8) He described his current financial situation as stable and stated he is currently able to meet his financial obligations. (GE 4 at 4; Tr. at 72)

The SOR alleged eight financial concerns (SOR ¶¶ 1.a - 1.h) totaling about \$117,000 in delinquent debts. Amongst the eight allegations are two delinquent student loans (SOR ¶¶ 1.a and 1.b) totaling about \$63,718, or 54% of the total alleged delinquent debts.

The evidence regarding financial issues alleged in the SOR is summarized below.

**SOR ¶¶ 1.a (\$38,297) and 1.b (\$25,421):** Applicant admitted being delinquent on his two U.S. Department of Education (DOE) student loans. In his SOR response, he stated he applied for student loan forgiveness in an effort to resolve these loans. Both student loans were placed for collection and assigned to the government as indicated in his April 2022 credit bureau report (CBR). (GE 2 at 2)

Applicant testified he took out these student loans between 2002 and 2004. He stated he initially paid either \$109 or \$120 per month, and that he stopped making payments in about 2005. He stated he restarted payments of either \$250 or \$344, but he could not remember when. (Tr. 34-35) He again stopped making payments at an unknown time and testified he had not made any full payments since 2018 or 2019, before the COVID-19 pandemic. (Tr. at 35). At some point he began making payments on a student loan rehabilitation program. He stated he then applied for student loan forgiveness by sending a short email to the DOE. He received a letter from DOE in either 2021 or 2022 indicating his student loans were paused under President Biden's program. (Tr. 36-38) At the hearing, Applicant presented a letter from DOE dated August 16, 2023, which notified him that the student loan repayment pause or deferment was ending and that student loan payments would resume in September 2023. He did not provide a copy of the letter at the hearing. (Tr. at 37) I left the record open for a week to allow Applicant to submit a copy of the August 16, 2023 letter and any additional documentary evidence, especially concerning his student loans. He did not submit any documentary evidence on his student loans during this period; nor did he submit a record copy of the August 16, 2023 letter referenced above.

**SOR ¶ 1.c (\$18,269):** Applicant admitted this delinquent debt. In his SOR response and at the hearing, Applicant stated he contacted the creditor many times but the creditor would not accept payments, but would accept a settlement of the delinquent debt. This individual account was opened in October 2014, and the last payment made on it occurred in October 2018. (GE 3 at 4; Tr. 39-42). The debt was assigned to a collection agent in December 2019, and ultimately charged off for the full \$18,269. (GE 3 at 3)

**SOR ¶ 1.d (\$804):** Applicant admitted this debt. In his SOR response and at the hearing, he stated his intent to resolve the debt. He testified he contacted the creditor in

March 2023 and made a payment of \$100 during the conversation, leaving a balance due of \$704. This is the first and only payment he made on this delinquent debt. He stated the debt was from rental equipment he did not return. (Tr. 42-47) He opened this individual account in 2018 or 2017, and first received notice of the delinquency in 2019 or 2020 (GE 2 at 3; Tr. 45-46)

**SOR ¶ 1.e (\$565):** Applicant denied this debt in his SOR response, stating he was unfamiliar with the creditor. However, at the hearing he admitted knowledge of the debt after becoming familiar with the underlying facts on the creditor’s website. This individual account is being collected by a third-party. Applicant stated this was for a claim against him by the person causing a rental car accident. The debt was originally assigned in January 2018. He recently made payment arrangements with the creditor where he agreed to pay about \$141 every two weeks starting in August 2023 until the debt is paid off. He presented proof he is in compliance with these arrangements. (GE 2 at 3; GE 3 pp. 1-2; GE 4 at 3; Tr. 48-52; and AE A;) This debt is being resolved.

**SOR ¶ 1.f (\$421):** Applicant admitted this delinquent debt and stated in his SOR response that the debt had been paid in full. (Tr. 52-54) This individual account was assigned in March 2020. Applicant stated he had made payments on the account of about \$22 per month (GE 4 at 3). He believed he paid off the debt in about April 2021, and that he would locate the receipt. No paid receipt was received for this debt. (Tr. at 53-54)

**SOR ¶ 1.g (\$52):** Applicant admitted this delinquent debt and stated he would contact the creditor and make arrangements to pay it off. He testified the debt was actually \$74 and that he paid it off in about January 2023. (Tr. 54-55) This individual account was assigned in November 2016. (GE 2 AT 4; Tr. 55, 57) He presented a receipt showing he paid off the debt in January 2023. (AE B at 2) This debt is resolved.

**SOR ¶ 1.h (\$2,700 past due of \$33,207 total balance):** Applicant admitted this delinquent debt, an automobile loan, in his SOR response and at the hearing. He opened this individual account in March 2020. In April 2022, the creditor reported a 120-day delinquency with a past-due balance of \$2,700. (GE 2 at 4) Applicant testified he offered to make a payment, but the creditor refused to accept it. The creditor demanded the full balance of the account. (Tr. 57-60) Applicant testified the car is still in his possession, and that the creditor never repossessed it though he provided the creditor with the location of the car. The last payment he made occurred in May 2022. (Tr. 57-60) The creditor ultimately charged off this delinquent debt for \$29,856 as reported in Applicant’s August 2023 credit bureau report. (GE 3 at 4; Tr. at 60)

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

## Analysis

### Guideline F, Financial Considerations

The security concern under this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant has a long history of financial problems. His current delinquent debts are numerous and ongoing. Most remain unresolved.

AG ¶ 20(b) is not established. Applicant has been gainfully employed since at least 2009, and he has also occasionally worked a second part-time position over this period. He earns a six-figure annual salary. There is no indication he acted responsibly by taking meaningful steps to substantively address his delinquent debts. He is credited with addressing two smaller delinquent accounts, but this action alone is insufficient to establish mitigation. Although his student loans are no longer in a collection or default status, it is because of a special Presidential action. Applicant is credited with taking the initiative to apply for the President's program, but mitigation requires looking back to evaluate an Applicant's security worthiness based on a record of historical actions. Applicant has a sporadic and inconsistent history of repaying his student loans. He stopped making payments on his student loans on several occasions for reasons not understood. The current status of his student loans does not excuse his past inaction when evaluating his security clearance worthiness. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021).

AG ¶ 20(c) is not established. Applicant testified he had informal discussions about financial matters with unknown acquaintances. This is insufficient to establish he is receiving financial counseling for his problems from a legitimate and credible source. His financial problems are not at all under control.

AG ¶ 20(d) is not fully established. Applicant is credited with taking minimal action to begin addressing two of the smaller delinquent debts. However, he has multiple delinquent debts that he has not acted on, without a plan in place. He has not established a repayment plan to address his longstanding delinquent debts, especially with higher balances.

In sum, there is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain in this case.

### **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 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 in this case.

### **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.d:	Against Applicant
Subparagraphs 1.e and 1.g:	For Applicant
Subparagraphs 1.f and 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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Gatha LaFaye  
Administrative Judge