



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



In the matter of:	)	
	)	
	)	
	)	
Applicant for Security Clearance	)	ISCR Case No. 23-00474

**Appearances**

For Government: Erin Thompson, Esq. Department Counsel  
For Applicant: *Pro se*

03/22/2024

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**Decision**

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BENSON, Pamela C., Administrative Judge:

After going through a contentious divorce, Applicant incurred significant legal fees and was responsible for most of the bills from the divorce decree. These were circumstances beyond his control which contributed to his financial problems; however, he failed to establish that he acted responsibly to address and resolve his delinquent accounts. He did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 28, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The DCSA 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 implemented by the DOD on June 8, 2017.

In his SOR response dated May 10, 2023, Applicant admitted all seven delinquent accounts. (SOR ¶¶ 1.a through 1.g.) His Answer did not provide any information about his efforts to resolve these delinquent debts, and he did not include any documentary evidence with his Answer. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge.

On November 3, 2023, a notice of hearing was issued, scheduling the hearing for November 14, 2023, via a video-teleconferencing application. Applicant requested a continuance for medical reasons, which I granted without objection. On December 1, 2023, a second hearing notice was issued, which rescheduled the hearing for January 17, 2024. Applicant requested a second continuance because he expected he would have to travel out of town for a family funeral on that date. I granted the continuance, without objection from Department Counsel who added an admonition to Applicant that if he requested a third continuance, an objection would be forthcoming. On January 22, 2024, DOHA issued a third hearing notice setting the hearing for February 14, 2024. The hearing proceeded as scheduled. Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1 through 4 without objection. Applicant testified but did not submit documentation. I left the record open until February 28, 2024, to provide Applicant an opportunity to supplement the evidentiary record. Applicant timely provided a one-page document, which I admitted as Applicant Exhibit (AE) A without objection. On February 22, 2024, I received the transcript of the hearing (Tr.). The record closed on February 29, 2024.

### **Findings of Fact**

Applicant is 44 years old. He enlisted in the U.S. Coast Guard in August 1997, and served on active duty until September 2001, when he went into the reserves. He was honorably discharged in May 2002. He re-enlisted in May 2002, and he served active duty in U.S. Coast Guard until April 2006, when he received an honorable discharge. He earned a bachelor's degree in January 2012. Since October 2008 he is employed full time as an IT support employee with a DOD contractor. He was married in 2002 and divorced in February 2020. He has three children, ages 21, 16 and 11. He has full custody of his 16-year-old son, and primary custody of his 11-year-old daughter. He does not pay child support to his ex-wife. (GE 1; GE 2; Tr. 18-23, 34, 47; GE 1)

### **Financial Considerations**

The March 2023 SOR alleges seven delinquent accounts totaling \$54,568; of which four are credit-card accounts, totaling \$54,179 (SOR ¶¶ 1.a-1.d); an unpaid cable bill for \$228 (SOR ¶ 1.e); and two delinquent medical accounts totaling \$161 (SOR ¶¶ 1.f and 1.g). According to a credit bureau report dated February 14, 2024, the balances for the four delinquent credit cards remained unchanged and were charged-off in the total amount of \$54,179. (SOR; GE 4; Tr. 59-61)

Applicant attributes his financial problems to his now ex-wife's uncontrollable spending during their marriage, and the legal expenses associated with their divorce in February 2020. He explained that his wife was from a wealthy family, and she

continuously purchased items without consideration of their monthly household budget. She handled the finances in the home, and whenever Applicant questioned her about the purchases, a quarrel would develop. It got to the point that he no longer questioned her about her spending because he knew it would turn into a nasty argument. The four credit card accounts alleged in the SOR became delinquent in 2019 or 2020, following his filing for divorce. (Tr. 18, 24-27, 32)

Applicant's lawyer's fees for the divorce and custody of his children totaled over \$20,000. His wife moved out of their home, and he became responsible for the house payment and utilities on his own. He also had to pay child support for a period of time. During the divorce, his oldest daughter and son needed counseling which was expensive but necessary. The divorce decree held him responsible for 68% of the marital debt, and his wife was responsible for the remaining 32%. His father-in-law immediately paid his daughter's marital debts. Applicant put the house up for sale, and he eventually broke even after paying off the mortgage and relator's fees. He now lives in an apartment. He currently earns an annual salary of \$123,000, and he receives two paychecks a month with a total net of approximately \$6,800. Since he no longer has to pay for after school childcare for his youngest child, he is now left with some money after paying his monthly expenses, but it is nominal. (Tr. 28-36, 46-52)

The SOR alleges that Applicant is indebted in the total amount of \$54,179, for four credit card accounts that were charged-off due to nonpayment. (SOR ¶¶ 1.a-1.d) He admitted these accounts and stated that he had tried working with the creditors to resolve these debts, but these attempts were unsuccessful. He also hired a consumer debt service in late 2020 or early 2021, but he was unable to continue with the program. He admitted he was aware these delinquent debts could have a potential adverse impact on his current security clearance. Since the SOR was issued March 28, 2023, he has failed to provide copies of communications with creditors or the arrangement of any payment plans. The debts alleged in SOR ¶¶ 1.a-1.d remain unresolved. (Tr. 37-43; GE 2, 4)

SOR ¶ 1.e alleges that Applicant is indebted to a cable company in the amount of \$228, for an account referred for collection in 2022. Applicant testified that he had paid this account, but he did not provide any supporting documentation while the record was held open. The February 2024 credit report did not reflect this account, and as such, I find in favor of Applicant for resolving this debt. (Tr. 44-45; GE 2)

SOR ¶¶ 1.f and 1.g allege two medical accounts totaling \$161, that were referred for collection in 2022. Applicant testified that he had paid these medical accounts, but he did not provide any receipts to support his claim. The current credit report does not reflect these delinquent medical accounts. I find in favor of Applicant for resolving these accounts. (Tr. 44-45; GE 2)

Applicant was provided the opportunity to submit a post-hearing personal financial statement to provide better insight about his income and expenses. He did not submit a financial statement. He stated he received financial counseling after attending a retirement seminar. Applicant's financial indebtedness was discovered from the DOD Continuous Evaluation Program after a February 2021 credit report reflected six

delinquent accounts totaling \$87,237. Applicant admitted he paid off one credit card for less than the full value after the creditor became aggressive in their pursuit of payment. This account was not alleged in the SOR. He submitted a post-hearing document which showed that the creditor cancelled \$3,358 of the debt and provided him with a 1099-C to file with his 2022 income taxes. He did not provide any plans or documentary evidence of a debt-resolution proposal for the \$54,179 of unresolved credit card debt as alleged in the SOR. (AE A; Tr. 40-42, 53, 56- GE 3)

## **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 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. . . .

Conditions that may raise financial considerations security concerns are provided 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.

The Government established that Applicant had seven delinquent accounts, totaling approximately \$54,568. The vast majority of the debt is attributed to four unpaid credit card accounts that remain delinquent and unresolved. Applicant did not express a plan to repay this debt totaling \$54,179. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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;
- (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 bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant experienced financial difficulties due to his wife’s excessive spending during the marriage, and the legal costs associated with their February 2020 divorce. Notwithstanding these circumstances beyond his control, he did not establish that he acted responsibly to address his four remaining delinquent accounts totaling over \$54,000. He failed to monitor his wife’s control of the family expenses, and after he announced his desire for a divorce, he neglected to ensure that the bills were being paid. His total reliance on his spouse does not absolve him of his responsibility in maintaining a workable household budget during their marriage.

Applicant provided no evidence of communications he had with the creditors or submit documentation of his efforts to consolidate his SOR debts with a consumer credit agency. Despite gainful employment, there is no evidence that Applicant has made any payments on any of the four delinquent credit card debts. This does not show a good-faith effort to resolve his debts. He did not provide a monthly budget showing his income and expenses, nor did he detail his financial counseling or discuss a reasonable plan to resolve these significant delinquent accounts. There is insufficient evidence to find that his finances are under control. None of the financial considerations mitigating conditions 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 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 adjudicative 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Notwithstanding circumstances beyond his control, Applicant has not demonstrated that he acted responsibly to address and resolve his delinquent accounts totaling over \$54,000. Applicant failed to 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
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security for Applicant to have a security clearance. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge