



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



In the matter of: )  
)  
) ISCR Case No. 23-00802  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

03/18/2024

**Decision**

DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On May 24, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR on June 26, 2023 (Answer). He requested a hearing before an administrative judge. The case was assigned to me on December 14, 2023.

The hearing was convened as scheduled on February 29, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 4 without objection. I also marked the Government's disclosure of evidence cover letter, dated August 16, 2023, as Hearing Exhibit I. Applicant testified but did not present any documentary evidence. I received a transcript (Tr.) of the hearing on March 6, 2024.

## Findings of Fact

Applicant is a 47-year-old employee of a government contractor for whom he has worked since 2012. He has never married, but he was engaged for several years before his fiancée passed away unexpectedly in 2017. He has no children. He earned a general educational development (GED) diploma. In about 2003, he earned a technical certificate. (Tr. 18-20; Answer; GE 1)

In the SOR, the Government alleged that Applicant has 16 delinquent debts totaling approximately \$60,000 (SOR ¶¶ 1.a through 1.p). These delinquencies consist of a residential lease (SOR ¶ 1.a), automobile loans (SOR ¶¶ 1.b and 1.o), loans to purchase furniture (SOR ¶¶ 1.c, 1.d, and 1.p), credit cards (SOR ¶¶ 1.f through 1.k), medical debts (SOR ¶¶ 1.e and 1.n), and telecommunications debts (SOR ¶¶ 1.l and 1.m). He admitted the SOR allegations except for the allegations in SOR ¶¶ 1.d, 1.e, 1.m, 1.n, and 1.p. His admissions are adopted as findings of fact. He provided additional comments with respect to each allegation. The SOR allegations are established through his admissions and the Government's credit reports. (SOR; Answer; GE 2, 4)

Applicant first became delinquent on the SOR debts in about 2018. The debts in SOR ¶¶ 1.d, 1.m, and 1.p are duplicate accounts of SOR ¶¶ 1.c and 1.l that I therefore find in his favor. Despite his failure to provide corroborating documentation, I believe his testimony that he paid the debt in SOR ¶ 1.n sometime in 2023, although the record is unclear whether he paid it before or after he received the SOR. I also find in his favor with respect to this debt. He has not resolved or made payments on the other accounts listed in the SOR. (Tr. 38-67, 69-75; Answer; GE 2, 4)

In 2021, Applicant attempted to make a payment arrangement with the creditor of the debt in SOR ¶ 1.c, but he could not afford the amounts the creditor required. In June 2023, after he received the SOR and realized his security clearance eligibility was in jeopardy, he hired a credit-repair company (CRC) that specializes in having debts removed from its client's credit reports by disputing them regardless of whether they are valid debts. The CRC does not help him pay his outstanding debts, and it does not offer financial counseling. It estimated that it would take between 8 and 12 months to let Applicant know which accounts remained on his credit report. He plans to try to make a payment arrangement on the SOR debts in the coming months, after the CRC finalizes its list of debts that would continue to be reported on his credit report. (Tr. 38-67, 69-75; Answer; GE 2, 4)

Applicant has experienced significant hardships over the past several years that have contributed to his inability to pay his financial delinquencies. In July 2017, his fiancée suddenly and unexpectedly passed away. In addition to the mental anguish he suffered, he could no longer afford many of his financial obligations as they had shared their income and expenses. After she passed away, his father came back into his life after years of estrangement. However, in November 2017, his father passed away as well. Applicant had emergency surgery in March 2018 to remove an internal abscess that became infected. He was in the hospital for a month while he recovered. He was out of work from January 2018 until April 2018 because of this medical emergency. In

about 2019, after he moved into his grandmother's house, his financial situation stabilized, but then his mother became gravely ill. He assisted her with living and medical expenses until she passed away in March 2022. (Tr. 30-33, 46-48, 52-54, 76-78; Answer; GE 1)

Applicant earns \$51,000, annually. He is paid bi-weekly and takes home about \$3,000 per month. He has two bank accounts with a combined balance of about \$140. He also has a retirement account with about \$40,000 in it. He has followed a written budget for about two years and has about \$300 in surplus funds at the end of each month, but he uses part of that surplus for other expenses such as gas and vehicle maintenance. (Tr. 20-23)

### **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 had 16 delinquent debts totaling about \$60,000. Those debts have been delinquent for several years. The above-referenced disqualifying conditions are established.

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.

For the reasons I provided in my findings of fact, I find for Applicant with respect to the allegations in SOR ¶¶ 1.d, 1.m, 1.n, and 1.p. However, the remainder of his delinquent accounts are more problematic.

While acknowledging that Applicant's delinquencies arose almost entirely due to extremely tragic circumstances that were beyond his control, he has not resolved the vast majority of his SOR debts. Except for the debt in SOR ¶ 1.c, he only attempted to resolve the debts after he received the SOR and realized his security clearance eligibility was in jeopardy. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

After he received the SOR, the only resolution action Applicant took was to hire a CRC to dispute his debts regardless of whether they are owed. This CRC has not provided him with financial counseling. Given these circumstances, he has not acted responsibly or in good faith to resolve his delinquencies. His financial issues are ongoing, and he has not established a track record of financial responsibility.

### **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. I am highly sympathetic to the tragic events that have befallen Applicant over the last several years. However, I must still follow the Directive to determine security clearance eligibility, and I must resolve any doubts in favor of national security.

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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.l:	Against Applicant
Subparagraphs 1.m-1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For 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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Benjamin R. Dorsey  
Administrative Judge