



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-02217
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: Christopher Snowden, Esq.

03/08/2024

**Decision**

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent debts. The personal conduct security concerns were mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 21, 2017. On April 13, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on June 1, 2022, and requested a hearing before an administrative judge. The SOR was amended on July 20, 2022, and Applicant answered the amendment on August 1, 2022. The case was assigned to me on February 2, 2023.

The hearing convened, as scheduled, on July 6, 2023. Department Counsel submitted Government Exhibits (GE) 1-8, which were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AE) A-K with his Answer to the SOR. At the hearing, he submitted AE L-R. Department Counsel objected to AE Q, and argued

it was not relevant. AE Q is an article about a class action lawsuit against a lender, in which Applicant claimed he was involved. I overruled Department Counsel's objection and admitted the AE Q into evidence. The rest of Applicant's exhibits were admitted in evidence without objection. After the hearing, I held the record open for two weeks to provide Applicant with the opportunity to submit additional documentary evidence. He submitted Applicant Exhibits (AE) S-AA, which were admitted in evidence without objection.

### **Findings of Fact**

In his answer, Applicant admitted SOR allegations ¶¶ 1.d-1.i, 1.l, 1.n, and 1.o, and denied allegations ¶¶ 1.a-1.c, 1.j, 1.k, 1.m, and 2.a. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 55 years old. He works as an aviation electrician for a government contractor. He was married in 1989 and divorced in 2008. He remarried in 2016. He has eleven children, four are minors, two of which live with him. He has taken college classes but has not yet earned a degree. He served on active duty in the Navy from 1989-2009. (Tr. 17-21; GE 1)

The SOR alleges 15 delinquent debts totaling about \$65,000, a prior security clearance revocation for financial reasons, and an SCA falsification. The status of the allegations is as follows:

SOR ¶ 1.a is an apartment lease account placed for collection for \$666. Applicant denied this allegation and claimed that it had already been paid. He stated in 2014 he was terminated from his job in State B and left the lease early. He provided documentation showing that he paid this debt in 2018. This debt is resolved. (Tr. 29-35, 96-101; AE C, V; GE 5, 6, 7)

SOR ¶ 1.b is an apartment lease account placed for collection for \$2,129. Applicant denied this allegation. He claimed that he rented the apartment for three months and satisfied the lease terms. For an unknown reason, the leasing company sued him in State C, but he had already moved home to State A. He claimed that the court papers were served to his former residence, and a final judgment was entered against him without his knowledge. He claimed that he was unaware of the debt until 2022, when a garnishment order was sent to his employer. He presented evidence showing that he was paying a garnishment through his paycheck but did not provide sufficient documentation showing that this was the debt being paid. The creditor listed in the court record does not match the creditor listed in the SOR. This debt is unresolved. (Tr. 35-43; AE B, R; GE 7, 8)

SOR ¶ 1.c is an apartment lease account placed for collection for \$2,308. Applicant denied this allegation. He stated this lease was for his daughter's apartment while she attended college in State A. He cosigned as the guarantor. She terminated her lease early in about 2018, which created the debt. He claimed he made a settlement offer in 2020 for

\$1400 with the collection agency. He gave his daughter the money to resolve the debt but could not provide documentation showing payment. This debt is unresolved. (Tr. 43-47; GE 6, 7, 8)

SOR ¶¶ 1.d-1.i are student loan accounts placed for collection for \$31,079. Applicant admitted these allegations. Some of these loans are from college classes he took in 1998, and some are loans he cosigned for his son in about 2017. He claimed that he made payments on his student loans until 2009 but did not provide supporting documentation. In 2022, he claimed he contacted the Department of Education (DOE) to set up a payment plan, but they were unable to make the arrangements because of the Covid-19 repayment pause. Next, his friend referred him to a student loan company who claimed that they would get half his student loan balance forgiven. He suspected their service was a scam, however, he signed a service agreement with them after receiving the SOR. He later abandoned the effort. In about June 2023, he was told that he may be eligible for having his loans discharged for being a disabled veteran. He corresponded with a lender and was sent an application for discharge. He failed to provide sufficient documentation showing that he qualified for discharge, or that any action was taken on these student loans. He also failed to explain why his son's student loans would be discharged. These debts are unresolved. (Tr. 47-54 101-112 132-135; AE D, L, S, T, U, W; GE 5, 6, 7, 8)

SOR ¶ 1.j is an auto loan account that has been charged off for \$1,969. Applicant denied this allegation. His car was totaled in an accident in 2015. He claimed that he established a settlement amount with the lender and directed his auto insurance provider to pay them, and no remainder should have been left over. He provided documentation showing that the settlement amount was \$6,500, and the insurance provider agreed to pay \$6,213.53. He did not provide sufficient documentation showing that the rest of the debt was resolved. (Tr. 54-58 113; AE E, Y; GE 5, 6, 7, 8)

SOR ¶ 1.k is a cellular phone account placed for collection for \$2,801. Applicant denied this allegation, and stated he never had an account with this service provider. He claimed that he contacted them to dispute the debt 5 or 10 years ago and was told it would be removed from his credit report. He did not provide documentation supporting this claim. This debt is unresolved. (Tr. 58-62 113-114; GE 5)

SOR ¶ 1.l is a judgement for an auto insurance account in the amount of \$7,304. Applicant admitted this debt. He was in an auto accident in 2008, and another vehicle was damaged. He was not found liable for a traffic violation but was found liable for damaging the other car in a civil case. He made two payments on the debt in 2014. He made a payment in 2015, when he found that his driver's license was being suspended for non-payment. He did not make any other payments until 2020. The record shows that he resumed payments in October 2020 through March 2023. The balance on the debt in March 2023 was \$10,500, which is higher than the original judgement balance. He did not provide documentation showing more recent payments or that this debt has been satisfied. This debt is unresolved. (Tr. 62-69, 114-116; AE F, O, P; GE 4)

SOR ¶ 1.m is a state tax lien entered in October 2016 for \$4,075. Applicant denied this allegation. Applicant worked in State B from 2011-2014, and again in 2018-2019. He asserted that although he was working and staying in State B, he was not a resident. While he had State B taxes deducted from his paycheck, he did not file income tax returns for State B. Applicant and other employees at his workplace received bonuses and state income tax was not deducted, which caused a tax investigation. In 2016, he was required to file his missing State B income tax returns, and the filings showed that he owed about \$911 for 2014. He did not pay State B this amount, but in 2018 it was deducted from his tax refund. Tax records showed that he still owed \$193. He provided documentation post-hearing showing that he paid State B the remainder in September 2020. This debt is now resolved. (Tr. 69-77 121-123 127-131; AE G, M, N, X; GE 2, 4, 5)

SOR ¶ 1.n is an auto loan account that has been charged off for \$12,691. Applicant denied this debt and claimed that it was resolved. The debt was for a car loan with a high interest rate. A group of states sued the lender for predatory loans. He claimed that he was contacted by a representative of the lender and told that he could return the car and the remaining debt would be wiped out. He stated the car was returned in 2020. He had no documentation substantiating his claim and stated that he was not provided any paperwork from the lender when the car was returned. This debt is unresolved. (Tr. 80-84 116-117; AE Q, AA; GE 6, 7, 8)

SOR ¶ 1.o alleges in 2008 Applicant's clearance was revoked for financial consideration security concerns. The clearance was reinstated after an appeal, and a warning was provided to Applicant to maintain his finances and incur no further delinquent debt. He denied this allegation and claimed that he never was informed of the outcome of his appeal and was not given the instructions to maintain his finances. He stated that he retired about six months after initially losing his clearance and left the Navy believing his clearance had remained revoked. (Tr. 21-26 93-96; GE 3)

SOR ¶ 2.a alleges that Applicant falsified material facts on his 2017 SCA by failing to report a judgement and liens entered against him in the financial delinquencies section. He denied this allegation. His explanation was that he failed to understand the basic meaning of the question and argued that these debts cited were not responsive to the question because he had made payments on the debts. He did report the debt in SOR ¶ 1.j on the SCA. (Tr. 77-80, 117-121; GE 1)

Applicant provided a monthly budget statement which shows that he has about \$3755 left over after his routine monthly expenses. (AE Z)

## **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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The financial considerations security concerns are established by the credit reports, the revocation documentation, tax and judgment records, and Applicant's admissions. AG ¶¶ 19(a), 19(c) and 19(f) apply.

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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts, other than ¶¶ 1.a and 1.m, are being paid, are resolved, or became delinquent under such circumstances that are unlikely to recur. His failure to pay these debts is both long-term and recent, as well as ongoing and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant failed to provide sufficient evidence showing that these debts resulted from conditions beyond his control or that he acted responsibly under the circumstances.

AG ¶ 20(d) applies to SOR ¶ 1.a. Applicant did not provide sufficient evidence showing a good faith effort to repay creditors or resolve debts, and he has not established any meaningful track record of debt payments for the other debts alleged.

AG ¶ 20(e) does not apply. Applicant did not provide sufficient documentation to establish a reasonable basis to dispute the legitimacy of past-due debts or evidence of actions to resolve the issue.

AG ¶ 20(g) applies to SOR ¶ 1.m. The State B tax debt was resolved in 2020.

## **Guideline E, Personal Conduct**

AG ¶ 15 details the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes...

I have considered the disqualifying conditions under AG ¶ 16 and the following is potentially applicable.

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar

form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to report a judgement and liens entered against him in the financial delinquencies section of his SCA. AG ¶ 16(a) applies.

I have considered the mitigating conditions under AG ¶ 17. The following is potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant stated that he did not report the required financial information on his SCA because he failed to understand the meaning of the question. His explanation for why he thought the judgement and liens were not responsive demonstrated that he did not understand these financial concepts. The unique facts of the judgement and liens in this case make his explanation plausible. Applicant did report some negative financial information on his SCA. AG ¶ 17(c) applies.

### **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 Guidelines F and E in my whole-person analysis.



Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate the security concerns under Guideline F arising out of his delinquent debts. The Guideline E security concern is mitigated.

### **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:	For Applicant
Subparagraphs 1.b-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n and 1.o:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Ross D. Hyams  
Administrative Judge