



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02293
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

04/03/2024

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 20, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 17, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on March 23, 2023. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government’s

evidence is identified as Items 2 through 6. (Item 1 is the SOR) Applicant responded to the FORM and provided documents marked as Applicant Exhibits (AE) A and B. There were no objections to any documents offered in evidence, and they are all admitted. The case was assigned to me on March 27, 2024.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted ¶¶ 1.d through 1.j and denied ¶¶ 1.a through 1.c. In his response to the FORM, he changed his answer to the SOR and admitted all of the allegations in it. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He attended college but did not earn a degree. He never married and has no children. He served in the Army National Guard from 2013 until his honorable discharge in November 2019. He has worked for his current employer since October 2021. He disclosed on his October 2021 security clearance application (SCA) that he was employed from June 2018 until September 2021, and he left the job for better opportunities and by mutual agreement after notice of unsatisfactory performance. He listed that he was unemployed from September 2014 to June 2018 and during that time he was focused on his military service. (Item 3)

Applicant's SCA asked him about any past financial delinquencies, and he responded "no" to all of the questions. In August 2022, he was interviewed by a government investigator. He was asked if he had defaulted on any loan in the past seven years and he said "no." He was asked if he had any delinquencies over 120 days, and he said he had two credit cards that became delinquent in 2018 after he lost his job. He could not recall any of the details about the accounts. He explained that when he completed his SCA, he was unaware of the relevancy of his financial matters and believed the only thing that would be considered was his military service. He said he rushed to complete the SCA and quickly answered "no" to all the questions. Applicant's statement that he lost his job in 2018 conflicts with his employment disclosure in his SCA. (Item 4)

Applicant was confronted by the investigator with the debt alleged in SOR ¶ 1.a (\$12,699). He agreed it was his debt for a car he purchased in March 2018. He said he fell behind on his payments when he was terminated from his job around 2018. He was stopped by the police, and he said he was told his paperwork on the car had issues. The car was impounded and then repossessed. He received correspondence from the creditor, and he ignored it because he felt the creditor did not give him a chance to make the payments that he missed to retrieve the car from the impoundment lot. He said he was not sure how he would repay the debt. (Item 4)

The debts in SOR ¶¶ 1.b (\$9,066), 1.c (\$4,208) and 1.e (\$1,045) are delinquent student loans. Applicant told the investigator he began taking out student loans in 2012 and was unable to pay them. He planned to apply for a federal student loan forgiveness program. They are unresolved. (Item 4)

Applicant told the investigator that the debt in SOR ¶ 1.d (\$1,844) was a medical bill that he did not believe he was responsible for. He was in a car accident and had an x-ray and rehabilitation. He said the accident was not his fault and he had insurance. He saw the debt on his Credit Karma report and ignored it. (Item 4)

The debt in SOR ¶ 1.f (\$1,030) was for cell phone service. Applicant told the investigator that the debt belonged to him. He missed monthly payments and could not afford to pay the bill. (Item 4)

Applicant told the investigator that the debt in SOR ¶ 1.g (\$921) did not belong to him. He said he was disputing the debt with the credit bureau. (Item 4)

The debt in SOR ¶ 1.h (\$622) is a charged-off credit card account. Applicant agreed the account belonged to him, and he fell behind in paying it in 2018. He said he made some sporadic payments, but eventually was unable to pay the debt. He said he planned to pay it in the future when he is able. (Item 4)

The debt in SOR ¶ 1.i (\$576) is for satellite television service. Applicant told the investigator that he was aware of the debt and viewed it on his Credit Karma report but disagreed with it. He admitted he was required to return the creditor's equipment, and he procrastinated in doing so. He said he returned it two months late and received a phone call in August 2022 and was told he still owed the amount due. He said he is disputing the debt.

The debt in SOR ¶ 1.j (\$184) is a debt to a bank. No information was provided about this debt, except that Applicant disputed it. He told the investigator that he monitors his Credit Karma report and is aware of his debts but could not afford to pay them. He is trying to improve his credit and once he is financially able, he will contact the creditors and resolve the debts.

The SOR debts are supported by Applicant's admissions and credit reports from May 2022 and December 2022. (Items 4, 5, 6; AE A)

In Applicant's response to the FORM, he changed his answer to the SOR and admitted he owed all the debts alleged. He stated that he now has a settlement agreement for all of his debts, and he is willing to pay the debts to show good faith and that he is responsible. He hopes this will be viewed favorably for him to obtain a security clearance. (AE A)

Applicant provided a copy of the agreement with a debt relief company that he entered into on April 11, 2023. The debts enrolled in the agreement are alleged in SOR ¶¶ 1.a, 1.d, 1.f, 1.h, and 1.i. Applicant did not provide any information about the status or what he planned to do regarding the delinquent debts in SOR ¶¶ 1.b, 1.c, 1.e, 1.g and 1.j. No other evidence was provided. (AE B)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (b) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant admitted he owed all the delinquent debts alleged in the SOR, which total approximately \$32,195. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

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

(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.

Applicant admitted he owes all the alleged debts in the SOR. He said he could not pay some debts after he lost his job in 2018. According to his SCA he has been employed since 2018 and with his present employer since October 2021. Applicant stated he could not afford to pay his debts. His debts are unresolved and therefore ongoing and recent. Even if his delinquent debts were beyond his control, he failed to show how he acted responsibly under the circumstances. After receiving the FORM, he contracted with a debt relief company and enrolled some of his debts in a settlement program. He failed to address any action he is taking on the other delinquent debts. AG ¶ 20(b) does not apply.

There is no evidence Applicant has participated in financial counseling. Perhaps he received some counseling when he contracted with the debt relief company, but it is unknown. He did not enter into the settlement program until after he received the FORM. This does not constitute a good-faith effort to resolve his delinquent debts. He did not include all his debts in the program and did not provide evidence regarding how he intends to resolve those not in the program. Applicant's failure to address his delinquent debts until after realizing that they were an impediment to obtaining a security clearance "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.) AG ¶¶ 20(c) and 20(d) do not apply. In his original answer, Applicant said he disputed certain debts, but then changed his answer and admitted them all. Therefore, AG ¶ 20(e) is not applicable.

### **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 the 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.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

### **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.j:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge