



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01399
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

05/01/2024

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**Decision**

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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 July 28, 2023, 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 October 4, 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 November 20, 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 1 through 5. Applicant provided a response to the FORM. It is marked as Applicant Exhibit (AE) A. There were no objections to Government's evidence or AE A. They are admitted in evidence. The case was assigned to me on March 27, 2024.

### **Procedural Matters**

The Government moved to amend the SOR by withdrawing ¶ 1.g. The motion is granted, and it is withdrawn.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.e. He denied SOR allegation ¶ 1.f. 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 38 years old. On his July 2022 security clearance application (SCA), he reports that he married in 2010 and separated from his wife in 2020. He references his divorce throughout the SCA, SOR answer, and FORM response. The actual date of his divorce is unknown. He has three children from the marriage, ages 12, 10 and 7. He served on active duty in the military from September 2009 to August 2010 and received an honorable discharge. He served with the National Guard inactive reserve from 2009 to 2020 and was discharged with a General Discharge under Honorable Conditions. He has been employed by a federal contractor since February 2021.

In his SCA, Applicant disclosed he was employed as an assistant manager with a rental car company from 2010 to 2020. He disclosed he left the employment due to the pandemic. When questioned by a government investigator in September 2022 he stated he left due to his poor performance and by mutual agreement with his employer. He attributed his performance to his divorce and the pandemic. (Item 2)

Applicant disclosed on his SCA the delinquent debts alleged in SOR ¶¶ 1.c (\$15,853), 1.d (\$12,060) and 1.e (\$7,067). He stated that these were credit cards that were used by him and his wife. Due to his unemployment and the high costs associated with his divorce, he was unable to meet his financial obligations. He said in his SCA that after his divorce is finalized, he will rebuild his savings and arrange a payment agreement to resolve the delinquent SOR debts over time. He stopped paying the accounts in January 2020. He reported the debts were resolved in December 2020, January 2021, and July 2021. He did not explain how they were resolved if he had not yet made any payment arrangements. (Item 2)

During Applicant's background investigation, he was confronted by the government investigator with the accounts alleged in SOR ¶¶ 1.a (\$26,906) and 1.b (\$25,533). He admitted these accounts. He explained that the debts in SOR ¶¶ 1.a, 1.b,

and 1.c were credit cards last used in 2019 for household items, food, clothes, computers, and cash advances to make house and car payments. No payments had been made since March 2020. He told the investigator that he would establish payment plans and intended to pay the debts in full by the end of 2027. (Item 3)

The government investigator further inquired about the debts in SOR ¶¶ 1.d and 1.e. Applicant stated these were personal loans that he obtained in 2017 and used to pay down his credit cards and student loan debts. He had not made any payments since March 2020. He intended to establish payment plans and pay the debts in full by the end of 2027. (Item 3)

Applicant responded to government interrogatories in May 2023. He was asked to provide the status of the debts alleged in SOR ¶¶ 1.a through 1.e. He responded for each debt that it was not paid, he was not making payments, and he had not made arrangements to pay it. (Item 4)

In his answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.a through 1.e. He stated for each debt, "I admit. I have a settlement agreement and payment plan arranged. This was due to my divorce and job loss during Covid." He did not provide any documentary evidence to show settlement agreements or payments. He denied the debt in SOR ¶ 1.f (\$170) owed to a communications company. He said it was alleged that he failed to return their equipment. He stated that he disputed the debt on his credit report and had the receipt showing he returned the equipment. He did not provide the receipt or a credit report reflecting the dispute. All the alleged SOR debts are reported on his May 2023 credit report. (Items 1, 4)

Applicant told the government investigator that he and his wife owned a house. They defaulted on the mortgage in March 2020 and made sporadic payments through August 2022. In September 2022, they sold the house and paid the mortgage and arrearages. After they made the payments, they made a profit of \$66,000. He stated that at that time they were current on their financial obligations except for debts alleged in the SOR. He stated that the delinquent credit cards and loans were a result of them living beyond their means. He said they lived in an expensive house, drove nice cars, went on pricey vacations twice a year, had student loan debt, and incurred costs for private home schooling and youth sports leagues. By March 2020 they were so far in debt they decided to stop making payments to most of their creditors. They made payments on the house, utilities, cars, and other household expenses. He said that since they separated in February 2021, they have had dual household expenses, and he was responsible for child support. He said he planned to become current on his financial obligations by applying the proceeds from the sale of the house and his income from his new job to resolve the debts. (Item 3)

In Applicant's January 2024 response to the FORM, he stated that he had reached settlements with the creditors in SOR ¶¶ 1.a (\$10,762) and 1.d (\$4,824). He said he made his first payments of \$50 to each account. He could not provide proof of payment until three payments had been made. He made a settlement agreement with the creditor in

SOR ¶ 1.b for \$14,043 and said he made a first payment of \$50. He made contact with the collection agency attorney for the debt in SOR ¶ 1.c. They were unwilling to settle or accept a minimal \$50 payment with promises of paying the amount monthly. They required a payment of 30% upfront. He could not make the payment. Applicant said he would continue to work on addressing this debt. For the debt in SOR ¶ 1.e, he said he had reached a settlement amount (\$3,533) but the account no longer belonged to the original creditor and was outside of the statute of limitations, so he was unable to make a payment to the collector or the original creditor. He stated “I was a bit bothered by this as I was unable to pay them or [original creditor.]” Applicant did not provide any documentary proof of any of his settlement agreements or payments. (AE A)

In Applicant’s response to the FORM, he attributed his failure to pay his delinquent debts to the stress he was dealing with from his divorce. He was focused on surviving. He stated he intends to pay the debts. He is patriotic and a veteran. He said he is good at his job and has a strong work ethic. (AE A)

### **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:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

The SOR alleged six delinquent debts totaling approximately \$87,589. 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 attributed his financial difficulties to his divorce, unemployment, and the pandemic. He admitted he lost his job due to poor performance. It is unclear exactly when his divorce became final. His unemployment was partially within his control, but the pandemic certainly impacted the economy and employment. These factors were beyond his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. He told the investigator that prior to the pandemic, loss of his job, and his divorce, he and his wife were living beyond their means, and they stopped paying their creditors in March 2020.

Applicant did not provide an explanation for why he failed to use his share of the profits from the sale of his house to reduce some of the debts. He did not provide any evidence of his efforts to provide payments to his creditors from the following times: when he was put on notice after he completed his SCA in July 2022; after he promised to set up payment agreements in his background interview in September 2022; when he

completed government interrogatories in May 2023; and when he wrote in his SOR answer regarding each of the above debts “I have a settlement agreement and payment plan arranged.” This was clearly not the case. In his FORM response, he indicated he recently accepted settlement agreements with three creditors but had only made one payment of \$50 to each. Applicant has been employed since February 2021.

Applicant did not act responsibly regarding his delinquent debts. He has more than \$87,000 of delinquent debts that are partially attributed to living beyond his means and were then exacerbated by the pandemic, divorce, and unemployment. His debts are ongoing. I cannot find they are unlikely to recur. They cast doubt on his reliability, trustworthiness, and good judgment. There is no evidence he has participated in financial counseling. There are not clear indications his financial issues are under control. I do not find Applicant’s statements of recent minimal payments to some creditors after receipt of the SOR constitutes a good-faith effort to repay his creditors. He indicated one creditor told him it could not accept a payment due to the statute of limitations, which indicates the age of the debt was much earlier than the pandemic. Applicant had an opportunity to provide evidence of his receipt and dispute on his credit report regarding the debt in SOR ¶ 1.f but did not. None of the 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 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.f:	Against Applicant
Subparagraph 1.g:	Withdrawn

### **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