



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



In the matter of: )  
)  
) ISCR Case No. 23-02194  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Caleb N. Byrd, Esq.

08/29/2024

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On February 21, 2023, Applicant submitted a Questionnaire for National Security Positions (SF-86). On October 30, 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. The SOR detailed reasons why the DCSA CAS was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On November 28, 2023, Applicant submitted his Answer to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 17, 2024, was provided to him by letter on that same day. Included within the FORM was Department Counsel's five-page written case summary and Government Exhibits (GE) 1 through 6. Applicant received

the FORM on February 12, 2024. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant was granted an extension to submit his FORM response until April 12, 2024 because he was in the process of seeking counsel.

Applicant did retain counsel and he timely submitted additional material in his FORM response. Department Counsel did not object to Applicant's FORM response and Applicant's FORM response is received into evidence. On June 24, 2024, the case was assigned to me. Applicant's FORM response consists of a seven-page "Memorandum for all Reviewing Authorities," and Applicant Exhibits (AE) 1 through 13. Applicant objected to the admission of GE 3, a June 14, 2023 Office of Personnel Management Personal Subject Interview summary (OPM PSI) on (1) lack of authentication grounds, and (2) because Counsel was unable to cross-examine the interviewer. In the alternative, Applicant provided several specific corrections to the narrative contained in the OPM PSI. Applicant's objection to GE 3 is sustained. GEs 1 and 2, GEs 4 through 6, and AEs 1 through 13 are received into evidence.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a – 1.d, with explanations. Applicant's admissions are incorporated or adopted herein as findings of fact. Additional findings of fact follow. (GE 1)

### **Background Information**

Applicant is a 46-year-old structural engineer employed by a defense contractor since October 2022. He seeks a Secret security clearance, which is a requirement of his continued employment. (GE 1, GE 2) Applicant previously held a security clearance while employed by a defense contractor from 2019 to 2020. (GE 1)

Applicant was awarded a bachelor's degree in December 2014. (GE 1) Applicant was married to a French citizen from February 2005 to August 2017. That marriage ended by divorce, which took place in France. Applicant had three children with his former spouse. His three children hold dual citizenship in the United States and France, and reside with their mother in France. (GE 2) Applicant remarried in May 2018 to a U.S. citizen. His current wife had three minor children when they married and Applicant is now responsible for six children, three from his first marriage and three stepchildren from his current and second marriage. (GE 2)

### **Financial Considerations**

Applicant's responsibility for the four delinquent SOR debts, totaling \$29,308, is established in part by (1) his November 28, 2023 SOR Answer (Applicant admitted SOR ¶¶ 1.a, 1.b and 1.d, and acknowledged 1.c was on his credit report, but was unable to determine what the debt was for); (2) his February 21, 2023 Questionnaire for National Security Positions (SF-86); (3) his March 25, 2021 DISS/CATS Incident Report; and (4) his April 21, 2023 and October 23, 2023 credit reports. (SOR Answer; GEs 1 - 2, 4 – 6)

In his SOR Answer, Applicant attributed his indebtedness to purchasing his second wife an engagement ring which accounted for the debts in SOR ¶¶ 1.a (collection account for \$12,301), 1.b (charged-off account for \$9,331), and 1.d (collection account for \$3,458). These three accounts pertaining to the engagement ring total \$25,090. As noted, Applicant was unable to determine what the debt in SOR ¶ 1.c (collection account for \$4,218) was for. Applicant stated the purchase for his second wife's engagement ring was made prior to "the knowledge of financial obligations from [his first marriage] which was dissolved on August 25, 2017, in France." He added that his local superior court in the United States enforced the final judgment from the French court and required monthly spousal support for his first wife in the amount of \$639.91 and monthly child support in the amount of \$1,279.82 for his three children living in France. (GE 1) Additionally, Applicant referred to recently incurred expenses for a cross-country move to an area in the United States with a lower cost of living.

Department Counsel's FORM noted that Applicant's SOR answer fell short of what was required to mitigate his debts. He reiterated, among other factors, long-standing DOHA case law that it is necessary for applicants to provide documentation that debts have been paid or are being resolved to mitigate financial considerations concerns. In short, Department Counsel put Applicant on notice that additional corroborating documentation was required.

Applicant addressed these shortcomings in his FORM response. Summarized, Applicant submitted additional mitigating evidence in his MEMORANDUM that augmented Applicant's SOR answer. In 2017, Applicant purchased an engagement ring for approximately \$25,000 and proposed to his now second wife. When Applicant and his second wife married, she brought three children into the marriage. She does not receive any support from her former spouse for the children. Applicant assumed primary responsibility to financially provide for his second wife and her children. (FORM response)

Shortly after getting engaged, Applicant discovered that he owed substantial support obligations to his former spouse and children. A French court determined his support obligations, which included back pay in the amount of \$15,648. The French assessment was routed through Applicant's local superior court. Applicant was able to satisfy this arrearage in October 2020 through a payment schedule. However, to satisfy this arrearage, he was unable to pay the creditors for his wife's engagement ring and the amounts owed were sold to three separate creditors in interest. At the time he was noticed in his SOR for the four outstanding debts of \$29,308, \$21,632 originated from the engagement ring. Applicant asserts that the fourth debt alleged in SOR ¶ 1.c is not his debt and is currently being disputed. (FORM response) Details follow.

SOR ¶ 1.a – Collection account (debt related to engagement ring) in the amount of \$12,301. Despite Applicant's good faith efforts, the creditor in interest has refused to enter into a negotiated settlement or payment plan with him. The creditor informed Applicant that he would be required to pay the principal sum of \$8,140 to obtain a proof of debt reconciliation document. Alternatively, if Applicant seeks reconciliation of the principal with interest (\$4,862), the full amount can be paid in increments; however, no

paper contract would be made available as is company policy not to set up anything in writing for incremental reconciliation. At the time when the FORM response was submitted, Applicant was unable to pay the \$8,140. However, Applicant remains ready, willing, and able to pay this debt if the creditor in interest will provide him with a contract for payments. **ATTEMPTING TO SETTLE.** (FORM response; AE 13)

SOR ¶ 1.b – Charged-off account (debt related to engagement ring) in the amount of \$9,331. On April 10, 2024, Applicant entered into an agreement with this creditor. Under the agreement, the creditor agreed to settle the debt for \$5,132. The agreement calls for Applicant to make three equal payments of \$1,711 over three months. Applicant made the necessary budget adjustments to pay this debt off as agreed. (FORM response; AE 7, AE 12) **DEBT BEING SETTLED.**

SOR ¶ 1.c – Collection account (not related to the engagement ring) in the amount of \$4,218. Applicant does not believe that this is his debt. Accordingly, he has filed a dispute with the credit bureau(s) to have it removed from his credit report(s). Applicant has stated that if the debt is proven to be valid, he is ready, willing, and able to settle the debt. (FORM response; AE 8) **DEBT DISPUTED.**

SOR ¶ 1.d – Collection account (related to the engagement ring) in the amount of \$3,458. On July 28, 2023, Applicant entered into a contract with the creditor in interest to pay off this debt. The agreement calls for Applicant to pay monthly installments from July 28, 2023 until April 28, 2025, to pay off the debt. To date, Applicant had made payments as agreed. (FORM response; AE 6) **DEBT BEING RESOLVED.**

Applicant has taken on an additional job in order to pay off his debts and regain financial responsibility. He currently works as an engineer for a non-defense contractor and for his defense-contractor employer. Between the two jobs, Applicant makes approximately \$28,000 per month. This level of income establishes that Applicant has the ability to pay off his debts, pay spousal support and child support to his former spouse and three children living in France, and support his current wife and three stepchildren living in the United States. (FORM response; AE 11)

Since 2017, Applicant has reduced his family's lifestyle costs by renting his home versus taking on a mortgage. He asserts that he is current on all other consumer loans including credit card and car payments. Applicant took the extraordinary step of moving his family cross-country from a high-cost area to a low-cost area to reduce his expenses. Applicant submitted a budget that reflects he is living within his means. Notably, his budget accounts for \$1,700 a month in debt reconciliation and still allows him an extra \$2,919 a month that he can apply towards resolving his delinquent debts. (FORM response; AE 12)

## **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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 clearance 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

### Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case:

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

The evidence of record establishes concerns under AG ¶¶ 19(a) and 19(c). Further review is necessary.

AG ¶ 20 lists five potential mitigating conditions:

- (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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt, and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶ 20(b) is partially applicable. Normally, divorce-related expenses would receive full mitigation under this mitigating condition. No doubt Applicant incurred divorce-related expenses for his divorce in France and costs related to his return and resettlement in the United States in 2017. He should have anticipated that spousal support and child support would be included as part of his French divorce settlement. However, before addressing his unresolved spousal and child support obligations, he incurred a \$25,000 debt for an engagement ring in the same year. When his spousal and child support arrearages became enforceable in the United States, he was unable to repay three of his creditors for the engagement ring, and these accounts became

delinquent. Furthermore, these delinquent accounts raised security concerns and prompted DCAS CAS to issue his SOR.

AG ¶¶ 20(d) and 20(e) are fully applicable. Applicant initiated the repayment process before his SOR was issued. He provided evidence that he attempted to negotiate measured and responsible payment plans to resolve three of the SOR debts related to the engagement ring. He moved cross country to lower his living costs, is renting in lieu of buying a home, and has taken on two jobs. He is generating enough income to repay his creditors, support a former spouse and three children in France, and support a spouse and three stepchildren in the United States. He is disputing the \$4,218 debt alleged in SOR ¶ 1.c, with results pending.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Given his resources, Applicant has initiated a pragmatic approach to the repayment of three of his debts and initiated a good-faith dispute for one of his debts. If it is determined that he is responsible for the disputed debt, he stands ready to pay it.

### **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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.



Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's past employment while successfully holding a clearance and current employment as a defense contractor weigh in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts are being resolved. He has provided evidence of being a productive, loyal, and responsible employee.

Applicant has taken on the responsibility of supporting a former spouse and three children in France and supporting a spouse and three stepchildren in the United States. To do so, he must generate substantial income, which he is doing. Applicant understands what he needs to do to establish and maintain his financial responsibility. He understands the importance of resolving all of his SOR debts and maintaining financial responsibility to avoid having his security clearance eligibility come into question in the future.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **Formal Findings**

The formal findings on the allegations set forth in the SOR are as follows:

|                           |               |
|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a – 1.d:  | For Applicant |

### **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. National security eligibility is granted.

ROBERT TUIDER  
Administrative Judge