



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



In the matter of: )  
)  
) ISCR Case No. 23-01575  
)  
Applicant for Security Clearance )

**Appearances**

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

09/24/2024

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**Decision**

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LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guideline F (financial considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 2, 2022. On September 11, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 responded to the SOR on September 29, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 14, 2023, including Items 1 through 6. On December 19, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 8, 2024, and did not respond. The case was assigned to me on April 2, 2024. Items 1 and 2, the SOR and Applicant's Answer to the SOR, respectively, are already a part of the administrative record. Items 3 through 6 are admitted in evidence without objection.

### **Findings of Fact**

In his Answer, Applicant admitted all allegations in the SOR, including SOR ¶¶ 1.a through 1.x. His admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 39 years old. In April 2003, he passed the General Educational Development (GED) test and received a certificate. In August 2004, he enrolled in a technical college and earned his associate degree in January 2006. He married in 2002, divorced in 2013, and married a second time in 2018. He has two stepchildren, ages 23 and 25 years old. (Item 3)

After graduation, Applicant worked as an aircraft mechanic for a defense contractor from February 2006 until he resigned in July 2020. He stated he resigned during the pandemic for health reasons and that he was not informed of the option to take an extended leave of absence. After resigning, he was unemployed for about three months. From October 2020 through April 2022, he worked part-time as a contract driver. From April to June 2022, he worked as a full-time supervisor for a retail employer. In June 2022, he resigned from the retail position and returned to work in his prior position as an aircraft mechanic at an increased pay level. (Item 3, Item 4 at 2)

Applicant stated that neither he nor his wife were working from August to December 2021, and that they were living off his wife's severance pay and their savings. He stated his wife became unemployed in November 2022, and he lost track of all accounts, balances owed, and creditor contact information. He admitted he did not make efforts to resume paying his delinquent debts because his wife was still unemployed. He also admitted he did not attempt to communicate with his creditors because he planned to file for bankruptcy. He stated that he is currently saving money to hire a lawyer to represent him in a bankruptcy action. (Item 4) There is no evidence in the record of Applicant ever filing for bankruptcy. Neither is there any evidence in the record of him receiving financial counseling.

Applicant completed his SCA in November 2022 where he disclosed seven unresolved delinquent debts totaling about \$29,000, which he listed as being "charged off." He asserted that he was unable to work full time for health reasons, and that he planned to "work on his delinquent debts in 2023." (Item 3). Applicant did not provide

supporting documents for his case in mitigation to show the current status of his delinquent debts or his health.

Applicant disclosed that his monthly salary since returning to his prior position totaled about \$7,900, with a net monthly income of about \$5,500. His monthly expenses and other debts totaled about \$5,000, which left about \$500 remaining each month. He listed his assets at about \$8,600, which included a 401(k) retirement plan at the time of his background interview, valued at about \$5,000. It is unclear whether he makes monthly contributions to his employer-based 401(k) plan from his current salary. It is also unclear whether Applicant's spouse has returned to the workforce. (Item 4) Moreover, he did not provide information regarding his earnings as a part-time contract driver, or as a retail supervisor. It is also unclear whether he ever received unemployment benefits or financial stimulus funds offered by federal and state governments to help individuals and families during the pandemic.

The evidence for all allegations in the SOR is summarized below

**SOR ¶¶ 1.a through 1.x:** Applicant admitted all 24 delinquent debts in the SOR. However, the debts alleged in SOR ¶¶ 1.i and 1.l are duplicate accounts. The 23 non-duplicate debts alleged in the SOR total about \$63,700, and are supported by two credit bureau reports, his comments to investigators during his background interview, and his admissions in Section 26 of the SCA. (Items 3 and 4) As previously indicated, he attributed his delinquent debts to a "loss of income in July 2020 due to personal health risk," in reference to his decision to resign from his position. He also stated his wife was "removed from her job due to phasing out of her position." (SOR Answer)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531. See also AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions in his SOR Answer, two credit bureau reports, and statements made during his background investigation establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

SOR ¶¶ 1.i and 1.l allege duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.l is concluded for Applicant.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(a), 20(c) and 20(d) are not established. Applicant's delinquent debts are numerous and ongoing. He has not produced evidence of any financial counseling, contacts with creditors, payments, payment plans, or any other evidence of efforts made to resolve his delinquent debts. He has also failed to establish that he initiated and is adhering to a good-faith effort to repay his delinquent debts.

AG ¶ 20(b) is not fully established. Applicant's decision to resign for health or medical reasons was not unreasonable, and his lack of employment or sufficient income

created financial problems largely beyond his control at least for a period of time. However, Applicant has not shown that he acted responsibly under the circumstances.

Applicant began working part-time after about three months of unemployment. He continued working in the position for about 18 months before he was hired into a full-time supervisory position in early 2022. He returned to his prior pre-pandemic position as an aircraft mechanic in June 2022 at a higher pay level. Though he has been gainfully employed for over two years, he has not taken affirmative steps to address his delinquent debts. There is no evidence in the record showing that he took steps to communicate with creditors to negotiate repayment plans or to settle debts. He disclosed that he did not take these actions because he planned to file for bankruptcy to resolve his financial issues. There is no evidence in the record that he ever filing for bankruptcy. Even if he had, it is well settled that the discharge of a debt in bankruptcy is not a substitute for demonstrating a track record of financial reform or rehabilitation. An applicant must do more than show his or her reliance on a legally available option such as bankruptcy to claim the benefit of mitigation.

Overall, there is insufficient evidence to determine that Applicant's financial problems will be resolved within a reasonable time. I am unable to find he acted responsibly under the circumstances or that he made a good-faith effort to repay his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. Financial considerations security concerns remain an issue in this case.

### **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.

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 security concerns based on 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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m - 1.x:	Against 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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Gatha LaFaye  
Administrative Judge