



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



In the matter of:)
)
) ISCR Case No. 22-00912
)
 Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: Sean D. Rogers, Esq.

01/28/2025

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has many years of unresolved past-due federal income tax returns and other unresolved delinquent debts. He did not provide sufficient information, documented or otherwise, to mitigate resulting financial considerations security concerns. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

In connection with his employment with a defense contractor, Applicant submitted a security clearance application (SCA) on June 13, 2019. On August 24, 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. The CAS issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on February 2, 2024, and requested a hearing before an administrative judge. (Answer) The case was assigned to another administrative judge and then reassigned to me on September 24, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice on October 2, 2024, scheduling the hearing for October 30, 2024. The hearing was convened as scheduled, however, at the hearing Applicant requested a continuance to enable him to obtain an attorney. The case was rescheduled for November 25, 2024, to allow him to seek counsel. On November 19, 2024, after Applicant retained an attorney, his attorney sought an additional continuance. Department Counsel had no objection and the hearing was rescheduled for December 13, 2024. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 13. GE 1-11 and 13 were admitted without objections. GE 12 was admitted over Applicant's objection. The Government also presented two hearing exhibits (HE), which I marked HE I and HE II. Applicant presented seven documents, marked and admitted without objections as Applicant Exhibit (AE) A through G. Applicant called two witnesses, and testified on his own behalf. The record was left open until December 27, 2025, for receipt of additional documentation. Applicant presented three additional documents, marked AE H through J in a timely manner. Department Counsel had no objections to AE H through AE J, and they were admitted. DOHA received the transcript of the October 30, 2024 hearing on November 22, 2024 (Tr-1) and the transcript of the December 13, 2024 hearing (Tr-2) on December 27, 2024.

Findings of Fact

In his SOR response, Applicant admitted all the allegations, SOR ¶¶ 1.a through 1.n. He provided explanations as to each alleged debt and some supporting documentation. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 44 years old. He attended some college. He has never married and has one child. (GE 1; Tr-2 at 20)

Applicant had experienced multiple periods of unemployment. He was unemployed for approximately three months during 2015, from July 2018 to November 2018, and from December 2018 to March 2019. His 2015 unemployment was a result of his unsatisfactory performance in failing to obtain a required certification. His unemployment in July 2018 to November 2018 was caused by his termination for unsatisfactory performance. His unemployment in December 2018 to February 2019 was a result of being terminated for sleeping on the job and tasking differences. From March 2019 to August 2020, he worked for a federal contractor as a systems administrator. When that contract ended, he was unemployed until December 2021. In

December 2021, he was hired by another government contractor and was in the same position through June 2023, although the company holding the contract changed. In April 2023, he was hired by his current employer. (GE 1; Tr-2 at 20, 64-70)

Applicant testified that he first started to experience financial problems in 2014. He attributed his financial problems to his unemployment, splitting up with his child's mother, and the death of his grandparents. Additionally, he was ordered to pay child support in approximately 2017. (Tr-2 at 25-28; GE 13)

Applicant filed Chapter 13 bankruptcy in September 2016, but the petition was dismissed in May 2017, as alleged in SOR ¶ 1.a. His petition reflected liabilities of \$153,230 and assets of \$20,775. His liabilities included a \$7,000 tax debt to his state comptroller and a \$20,000 tax debt owed to the Internal Revenue Service. He testified that he attempted to get his debts consolidated by filing Chapter 13 bankruptcy, but that the proposed monthly payment of \$531 per month for the first year and then \$1,042 for four additional years was not accepted by the court. As a result, the bankruptcy was dismissed. (Tr-2 at 30-33, 74-75; GE 4-5, 7)

In 2017, Applicant contacted a debt consolidation law firm. He hired it to dispute debts he did not recognize and consolidate his legitimate debts. However, by the end of 2017, he decided that he was doing most of the work himself, and that he would discontinue the law firm's service. He testified that it has been a slow process, but he has tried to reach out to his creditors. (Tr-2 at 34, 63; GE 13)

In SOR ¶ 1.b, the Government alleges that Applicant was indebted to a cable and internet company on an account placed for collections in the amount of \$697. He made a payment agreement with the collection agent in November 2022, but did not make all the required payments under that agreement. Applicant testified that he contacted both the original creditor and the collection company, but neither had record of the account as of December 2024. This debt no longer appears on his most recent credit reports. This debt is unresolved. (Tr-2 at 35-38, 77-79; GE 4-5, 7; AE A)

In SOR ¶ 1.c, the Government alleges that Applicant was indebted on an account placed for collections in the amount of \$774. He defaulted on this debt in 2016. After receiving the SOR, he reached out to this creditor and negotiated a payment agreement with this creditor to resolve the debt for \$594, to be paid between October 2022 and December 2022. He did not follow through on that agreement. On November 11, 2024, Applicant made a settlement agreement with this creditor. The terms of the agreement call for him to make six monthly payments of \$80.78, beginning December 28, 2024. He presented no documentation of payments under this agreement. This debt is unresolved. (Tr-2 at 38-39, 80-83; GE 4 at 3, GE 5 at 3; AE A)

In SOR ¶ 1.d, the Government alleges that Applicant was indebted on an account placed for collections for the balance due on a vehicle that was repossessed in

the amount of \$19,403. This debt was satisfied through a court-ordered garnishment on August 4, 2023, as documented in a notice of satisfaction. This debt is resolved. (Tr-2 at 39-40, 85-86; GE 4 at 3, GE 11; AE B)

In SOR ¶ 1.e, the Government alleges that Applicant was indebted to a bank on a charged-off account in the amount of \$2,654. He testified that he disputes this debt because it was for a secured credit card. He previously negotiated a settlement agreement with this creditor in 2022, but he did not follow through with his payments as required. However, on December 16, 2024, he created a payment agreement with the creditor to pay \$145 on December 29, 2024, and 11 subsequent monthly payments of \$125. He did not document any payments under this agreement. This debt is unresolved. (Tr-2 at 86-88; GE 4 at 6, GE 5 at 3; AE H)

In SOR ¶ 1.f, the Government alleges that Applicant was in arrears on his child support obligation in the amount of \$912. This debt was resolved through garnishment of his wages. He completed his final payment on October 26, 2022, and the garnishment was terminated. His son is now an adult and Applicant no longer is under an obligation to pay child support. This debt is resolved. (Tr-2 at 40-43, 89-96; GE 5-6, 10, 13; AE D, AE E)

In SOR ¶¶ 1.g and 1.h, the Government alleges that Applicant was indebted on two educational accounts that were placed for collections in the amounts of \$33 and \$21, respectively. He testified that his wages were voluntarily garnished to repay these loans. He was unaware of the remaining balance until he received the SOR. He claims he paid off the remaining balances over the phone and they were removed from his credit report. He did not document payments on these debts. These debts are unresolved. (Tr-2 at 44-46, 96-100; GE 3-6)

In SOR ¶ 1.i, the Government alleges that Applicant was indebted on a charged-off vehicle loan in the amount of \$25,399. This debt was for a loan he took in 2013 to finance a luxury vehicle. The vehicle was repossessed in 2014, after he defaulted on the monthly payments. Between May 2014 and August 2022, he did not make any payments to this creditor. He testified that he contacted the creditor after receipt of the SOR, but that the creditor was unable to find record of the account. The debt no longer appears on his credit report, and he does not believe he owes this creditor anything. This debt is unresolved. (Tr-2 at 46-48, 100-103; GE 6 at 3)

In SOR ¶ 1.j, the Government alleges that Applicant was indebted on a charged-off account in the amount of \$494. Applicant used this account to finance his purchase of furniture in 2016. He negotiated a settlement agreement with this creditor two days prior to the hearing. He is scheduled, via automatic withdrawal, to make four monthly payments of \$123 on the 28th of each month from December 2024 through March 2025. The record does not show any payments under this agreement. It is unresolved. (Tr-2 at 48-49, 103-106; GE 6 at 5; AE F)

In SOR ¶ 1.k, the Government alleges that Applicant was indebted to a state in the amount of \$598 for unpaid traffic fines, court costs, and the criminal injuries compensation fund. He claimed the debt was resolved on November 3, 2022, as documented by a receipt from the state. However, the receipt identifies a citation number that is one digit different from that in the court records for the alleged citation but corresponds to the full number on another citation. This debt is unresolved. (Tr-2 at 49-50, 107-112; GE 8; AE C, G)

In SOR ¶ 1.l, the Government alleges that Applicant was indebted to his state of residence in the amount of \$2,754 for an unpaid tax lien filed against him in December 2016. This debt was satisfied on June 25, 2024, as documented in the Government's records. (Tr-2 at 51-52, 112-115; GE 9; AE C)

SOR ¶¶ 1.m and 1.n alleges that Applicant failed to file his Federal and state income tax returns for tax years 2018 through 2021. He also admitted that he filed his 2022 and 2023 Federal and state income tax returns late. He explained that he hired a certified public accountant to file the tax forms for him and that he believed they were all filed in the summer of 2024. He presented copies of Federal tax and state returns for tax years 2019 and 2020, along with a cover letter from his CPA stating they needed to be signed, dated, and mailed. There is no evidence he did so. Nor does the record reflect that he filed his Federal and state income tax returns for tax years 2018, and 2021-2023, beyond his bare averments. (Tr-2 at 52-53, 115-122; GE 1, 13; AE I-J)

Applicant's November 2024 credit report also reflects several new delinquent accounts in the amount of \$974, \$453, and \$220. He testified he does not recognize the name of the first two creditors, but that the \$220 account is "current," but was past due. (Tr-2 at 123-128, 137; GE 2)

Since these new delinquent debts and the late 2022 and 2023 Federal and state income tax returns were not alleged in the SOR, I will not consider them in evaluating the disqualifying conditions under financial considerations, but I will consider this information in my mitigation and whole-person analysis.

Applicant has engaged in international travel several times. On his SCA, he disclosed that he took a Caribbean cruise in July 2018. More recently, Applicant disclosed he spent about \$1,300 to go to Paris in 2023 and about \$800 to take his son to the Dominican Republic in 2024. (Tr-2 at 130-132; GE 1)

Applicant did not provide any evidence of credit counseling. His net income is approximately \$6,300 per month. He estimated that he has about \$2,000 left over at the end of the month after meeting expenses. He does not use a written budget. He testified that he is now "very stingy when it comes to trying to save and not live beyond his

means.” He also expects that he will receive a pay increase at work soon. (Tr-2 at 54-56, 62-63)

Applicant called two witnesses to testify on his behalf. The first was a close friend who has known him for 26 years. The friend testified that Applicant has been focusing on financial literacy for the past few years. He has watched Applicant maturing and learning to deal with his finances. (Tr-2 at 143-152) The second witness was his contract program security officer from 2011 to 2013. She was not previously aware of Applicant’s financial problems. In her opinion, Applicant is honest and trustworthy. (Tr-2 at 154-161)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s eligibility 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 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(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.” 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 not drawn 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. Under Directive ¶ E3.1.15, 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 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.

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . .

The guideline sets forth several 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.

Applicant has a ten-year history of not meeting his financial obligations in a timely manner, including petitioning for Chapter 13 bankruptcy in 2016. From 2014-2024 he consistently has been unable to satisfy his debts. The debts are established by public records, credit reports in evidence, and his admissions. Additionally, he failed to file his 2018 through 2021 Federal and state income tax returns as required, established by IRS tax transcripts and Applicant’s admissions. All the above disqualifying conditions apply.

Conditions that could mitigate 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;

(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

(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.

Applicant's debts are recent because they are ongoing. Although he paid or settled three of the debts, he failed to meaningfully address the remaining debts. While he recently established payment agreements with several creditors, his promises to pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). In the past, he has made payment agreements with creditors but has not followed through on his promises. Additionally, he has several new delinquent debts that show additional financial irresponsibility. AG ¶ 20(a) is not applicable.

Applicant presented evidence that the debts were affected by circumstances beyond his control, namely, his unemployment. It is arguable whether his unemployment was beyond his control because he was terminated for unsatisfactory performance and sleeping on the job. Further, he did not act responsibly concerning the debts when he failed to resolve them in a timely fashion. AG ¶ 20(b) has some application but does not fully apply.

Applicant hired a debt-consolidation law firm to help him manage his debts but presented no evidence of financial counseling. His track record to date does not support a stable financial outlook. Based upon his history, there is no reason to believe that he will change his financial practices in the future. While he did resolve three debts, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.d, 1.f, and 1.i.

Applicant had the burden to show that he filed his Federal and state income tax returns for tax years 2018 through 2021. He did not present any documentation with respect to filing his 2018 or 2021 tax returns. He presented unsigned and possibly unfiled Federal and state tax returns for tax years 2019 and 2020. Additionally, his late Federal and state tax returns for 2022 and 2023 are not alleged in the SOR, but they undercut assertions of mitigation as they show additional irresponsibility. Applicant did not meet his burden to show that AG ¶ 20(g) 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 under all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant failed to establish a documented track record of payments or other responsible actions towards his consumer debts. He also did not demonstrate responsibility with respect to his delinquent Federal and state income tax returns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information. Applicant did not meet his burden to mitigate the financial security concerns.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant

Conclusion

Considering all the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge