



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



In the matter of:

ISCR Case No. 22-02626

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

03/17/2025

**Decision**

TUIDER, Robert, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 9, 2021, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On November 17, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On

December 12, 2023, Applicant responded to the SOR. On January 31, 2024, Department Counsel was ready to proceed. On February 6, 2024, the case was assigned to me. On February 12, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing on March 1, 2024. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered seven exhibits into evidence, and Applicant did not offer any exhibits into evidence. (Tr. 11-12; GE 1-GE 7) All proffered exhibits were admitted into evidence without objection. (Tr. 11-12) On March 14, 2024, DOHA received a copy of the transcript. The record was closed on March 1, 2024. (Tr. 77)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, and 1.h. He denied the allegations in SOR ¶¶ 1.d, 1.f, 1.i, 1.j, and 1.k. He also said the debts in SOR ¶¶ 1.b and 1.c were the same debt, and the debts in SOR ¶¶ 1.e and 1.h were the same debt. His admissions are accepted as findings of fact.

Applicant is a 49-year-old aviation mechanic. (Tr. 12) He needs a security clearance to retain his employment. (Tr. 17, 63-64) He came to the United States from Mexico in 1992 when he was 17 years old. (Tr. 18) In 1994, he graduated from high school. (Tr. 17) In 1995, he joined the Navy, and he honorably retired from the Navy in 2015. (Tr. 18-19) His rate was aviation machinist mate first class. (Tr. 19) He was deployed to Iraq twice in 2005 and 2007, to Kuwait once in 2007, and on carriers six times, which sailed in the vicinity of Iraq. (Tr. 19-21) Each deployment was for about two to three months. (Tr. 22) His Department of Veterans Affairs (VA) disability rating is 100 percent. (Tr. 65-66)

Applicant was married from 1997 to 2020. (Tr. 22) His son is 15 and his other two children from his marriage are 18 or older. (Tr. 22, 24) His former spouse receives half of his military retirement, which is about \$1,000 a month. (Tr. 25) He also pays \$500 monthly in child support to his former spouse. (Tr. 25) He pays \$250 a month to support a 19-year-old daughter from a relationship outside of his marriage, and he pays \$700 a month for tuition for a 20-year-old daughter from a relationship outside of his marriage. (Tr. 27-29)

### **Financial Considerations**

Applicant was unemployed from June of 2015 to April of 2016 and from November of 2021 to May of 2022. (Tr. 58) He said his financial problems began when he was divorced in 2020. (Tr. 32) He said he received responsibility for all of the marital debts. (Tr. 32) Later, he said the divorce decree said his former spouse was responsible for part or all of some of the SOR debts. (Tr. 62) His former spouse is a food attendant in a school. (Tr. 33-34) He has taken responsibility for the SOR debts because he is on the

contracts with the creditors, and he does not believe his former spouse will pay anything to address the debts listed in his divorce decree. He received financial counseling when he was in the Navy. (Tr. 62)

The November 17, 2023 SOR alleges 11 delinquent debts totaling \$68,259, and their status is as follows:

SOR ¶ 1.a through 1.e, 1.g, and 1.h allege seven delinquent debts totaling \$67,429 owed to the same credit union for \$21,275, \$12,795, \$12,550, \$8,867, \$4,720, \$2,598, and \$4,624, respectively. Applicant said the credit union is not working with him to establish a reasonable payment plan. (Tr. 35) His most recent payments on the debts were in June 2022 for the \$21,275 debt and in November 2023 for the other credit union debts. (Tr. 36-47; GE 4) He did not remember the amount of his most recent payments. (Tr. 36-47)

The credit-union creditor advised Applicant that he was only paying interest, and he was not reducing the amount of the loans. (Tr. 37) He stopped paying the creditor because he believed he was not making progress reducing the amount of the debts. (Tr. 37) He was unable to borrow funds to pay the debt because of his bad credit. (Tr. 37) He attempted to consolidate the debts and obtain a payment plan for the credit union debts in 2023; however, the creditor would not agree to his proposals. (Tr. 39, 72) Applicant believes that he has five accounts with the credit union instead of seven accounts indicated in the SOR. (Tr. 52) He believed the debt for \$4,720 may be incorrect because a vehicle was repossessed. (Tr. 50-52) His plan for the future is to continue to ask the credit union to combine the debts, and then he will try to establish a payment plan with the credit union. (Tr. 61)

Applicant credibly stated he had five debts owed to the credit union. In his SOR response, he said SOR ¶¶ 1.b (\$12,795) and 1.c (\$12,550) duplicated each other. He also said SOR ¶¶ 1.e (\$4,720) and 1.h (\$4,624) were the same debt. SOR ¶¶ 1.b and 1.e are mitigated as duplications. In sum, he has five delinquent debts owed to the creditor totaling \$49,914.

SOR ¶ 1.f alleges a utility debt placed for collection for \$202. Appellant said he paid the debt, and his credit report reflects the debt was paid in August 2023. (Tr. 47-48, 57; GE 4)

SOR ¶ 1.i alleges a telecommunications debt placed for collection for \$401. Applicant was unaware of this debt. (Tr. 54) He called the creditor, and the creditor was unable to give him information on the debt. (Tr. 55, 57)

SOR ¶ 1.j alleges a telecommunications debt placed for collection for \$153. Applicant said he was responsible for this debt, and he said he could pay it off today. (Tr. 55-57)

SOR ¶ 1.k alleges an account placed for collection for \$74. Applicant said he had an account with the creditor, and he needed to investigate the basis of the debt. (Tr. 56) If the debt is valid, then he said he would pay it. (Tr. 56)

Applicant's monthly net income, including VA disability and Navy retirement pay, is about \$11,000. (Tr. 67) He has a monthly remainder of several thousand dollars after paying support, alimony, rent, and other expenses. (Tr. 70)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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*, 484 U.S. 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **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.

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.

AG ¶ 19 includes 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.”

“[A] single debt can be sufficient to raise Guideline F security concerns.” ISCR Case No. 19-02667 at 3 (App. Bd. Nov. 3, 2021) (citing ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016)). “Additionally, a single debt that remains unpaid over a period of years can properly be characterized as a history of not meeting financial obligations.” *Id.*

The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Additional inquiry about the possible applicability of mitigating conditions is required. Discussion of the disqualifying conditions are contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20, which may be applicable in this case are as follows:

(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 in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance

of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

AG ¶ 20(a) does not apply to the debts which were delinquent when the SOR was issued. “It is also well established that an applicant’s ongoing, unpaid debts demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)).

Applicant provided some mitigating information under AG ¶ 20(b). Applicant was unemployed from June of 2015 to April of 2016 and from November of 2021 to May of 2022. He said his financial problems began when he was divorced in 2020. These are circumstances partially or fully beyond his control. However, “[e]ven if [an applicant’s] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). He did not establish mitigation under AG ¶ 20(b) because he failed to prove that he acted responsibly under the circumstances. The connections of the adverse circumstances to his delinquent debts, and the financial costs of these circumstances are unclear. He had the financial resources to make more progress on his SOR debts.

“[U]ntil an applicant has a meaningful financial track record, it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolved debts. The phrase ‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment on debts.” ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007)).

In ISCR Case No. 17-03229 at 6 (App. Bd. June 7, 2019) the Appeal Board said:

As we have previously stated, the timing of resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. *Id.* (citing ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017)).

Applicant did not make any progress resolving the five delinquent debts in SOR ¶¶ 1.a, 1.c, 1.d, 1.g, and 1.h totaling \$49,914 owed to the same credit-union creditor. He did not make any payments to the credit-union creditor after November 2023. He does not have a payment plan on the five debts. He is credited with paying the debt in SOR ¶ 1.f (\$202). He did not recognize the debt in SOR ¶ 1.i (\$401), and the creditor was unable to locate his account information. He has not made enough payments or taken sufficient actions to resolve debts to establish a “meaningful track record” of debt resolution. I am not confident that he will maintain his financial responsibility based on his history of having financial problems. Financial considerations security concerns are not mitigated.

### **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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 49-year-old aviation mechanic. In 1994, he graduated from high school. In 1995, he joined the Navy, and he honorably retired from the Navy in 2015. His rate was aviation machinist mate first class. He was deployed to Iraq twice in 2005 and 2007, to Kuwait once in 2007, and on carriers six times, which sailed in the vicinity of Iraq. Each deployment was for about two to three months. His VA disability rating is 100 percent.

The evidence against grant of a security clearance is more persuasive. Applicant’s financial problems are detailed in the facts and financial considerations section, *supra*, and this evidence is more substantial than the evidence of mitigation. He did not establish that he was unable to make more timely and significant progress resolving his SOR debts. I am not convinced he will establish his financial responsibility. The financial evidence raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.



This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards resolution of his debts and maintenance of his financial responsibility, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j and 1.k:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

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Robert Tuidor  
Administrative Judge