



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01418

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel

For Applicant: *Pro se*

05/09/2025

Decision

HARVEY, Mark, Administrative Judge:

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

Statement of the Case

On October 25, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On September 27, 2024, 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 October 3, 2024, Applicant provided his response to the SOR. On November 27, 2024, Department Counsel was ready to proceed. On December 11, 2024, the case was assigned to me. On December 30, 2024, the Defense Office of Hearings and Appeals issued a notice scheduling the hearing on February 26, 2025. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant did not offer any documents into evidence. (Tr. 11, 15-16; GE 1-GE 4) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 16) On March 7, 2025, DOHA received a copy of the transcript. The record was not held open after the hearing for post-hearing documentation. (Tr. 59)

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 SOR allegations in ¶¶ 1.a-1.c. His admissions are accepted as findings of fact.

Applicant is 33 years old, and he has worked for a government contractor for the previous 15 months. (Tr. 6-8,18) In 2009, he graduated from high school. (Tr. 6) He has about three college credits. (Tr. 6-7) He has not served in the military. (Tr. 7) In 2012, he married, and he and his spouse have adopted two children who are ages 13 and 15. (Tr. 7)

Applicant was unemployed from June of 2022 until about November of 2022. (Tr. 19) From June of 2021 to June of 2022, he worked as a life insurance salesman. (Tr. 19) From July of 2020 to June of 2021, he worked as a storeroom attendant. (Tr. 19) From March of 2020 to June of 2020, he worked as a warehouse associate. (Tr. 19-20) He was unemployed between October of 2015 and March of 2017, and his spouse worked outside their home during this time. (Tr. 19, 31; GE 1 at 15) She is currently attending college to become a teacher, and she has not worked outside their home since 2023. (Tr. 38) He does not require a security clearance for his current position; however, the absence of a security clearance reduces his ability to do some work-related functions. (Tr. 53)

Financial Considerations

Applicant fell behind on several debts because of home repair expenses, such as replacement of his roof, and five months of unemployment in 2022. (Tr. 19, 21) In August 2017, he was diagnosed with a disease, and it was necessary for him to take time off from work because he was unable to work as hard as previously. (Tr. 27, 32) He was unable to obtain part-time employment because of his reduced stamina due to the disease. (Tr. 27)

Applicant's September 27, 2024 SOR alleges, and his November 11, 2023, and July 9, 2024 credit bureau reports (CBRs) state, he has three delinquent debts totaling \$36,122. The status of the SOR debts is as follows:

SOR ¶ 1.a alleges, and Applicant admitted, he has an account placed for collection for \$17,444. (SOR response) In 2016, Applicant and his spouse borrowed funds to replace the roof of their home. (Tr. 22-23, 30-32) It was assigned to collections in December of 2021. (Tr. 25; GE 3 at 2) Applicant said he was unable to make payments because he had too many expenses. (Tr. 26)

SOR ¶ 1.b alleges, and Applicant admitted, he has a charged-off account for \$16,767. (SOR response) Applicant and his spouse borrowed funds to replace the windows in their home. (Tr. 30-31) He made about six payments, and then he stopped making payments because they were unable to afford the payments. (Tr. 33) In October of 2016, the creditor charged off the debt. (Tr. 29, 32; GE 2 at 4; GE 3 at 2)

SOR ¶ 1.c alleges, and Applicant admitted, in February of 2023, his medical account was placed for collection for \$1,911. (Tr. 34; GE 2 at 3; SOR response) He did not make any payments on the account. (Tr. 36-38)

Applicant's annual income after taxes is about \$38,000. (Tr. 38) He tries to use a budget. (Tr. 42) He was unsure if he had a remainder at the end of the month after paying debts and expenses. (Tr. 43) He does not have a 401(k) account. (Tr. 44) He has about \$100 in his savings account. (Tr. 43) He did not attempt to negotiate payment plans for his three SOR creditors. (Tr. 48) He considered entering into a debt consolidation plan or refinancing his house to resolve his debts; however, he chose not to implement these ideas. (Tr. 28)

Applicant received a \$4,000 refund for tax year (TY) 2023 from the IRS and a \$5,000 refund for TY 2024. (Tr. 50, 53) Applicant and his spouse used the refunds to purchase furniture, such as new beds for the children, and new cell phones, and to pay some expenses and some debts. (Tr. 50) They did not use the refunds to address their SOR debts.

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 is 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 SOR debts. "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 was unemployed, underemployed, and had a disease which limited the work that he could do. These factors are circumstances largely beyond his control, which adversely affected his finances. 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). The DOHA Appeal Board has said:

[A]n applicant must act responsibly given his or her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct even if it may only provide for the payment of debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). What constitutes responsible behavior depends on the facts of a given case and the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern. ISCR Case No. 09-08462 at 4. Relevant to the equation is an assessment as to whether an applicant acted responsibly given her limited resources See, e.g., ISCR Case No. 08-06567 at 3-4 (App. Bd. Oct 29, 2009).

ADP Case No. 23-00547 at 3 (App. Bd. Apr. 23, 2024).

Applicant’s September 27, 2024 SOR alleges, and Applicant admitted, he is responsible for three delinquent debts totaling \$36,122. He did not establish that he acted reasonably under the circumstances. He could have used his federal income tax refunds to start a payment plan with at least one of his three SOR creditors. He has not made any progress addressing his delinquent SOR debts, and the connections to and financial costs of his unemployment, underemployment, and medical issues are insufficient under the circumstances to fully establish AG ¶ 20(b).

None of the mitigating conditions fully apply. “[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)). There is no evidence that Applicant is working to establish payment plans to address his SOR debts. I am not confident that he will establish payment plans, pay, or otherwise resolve any of the three unresolved SOR debts, and maintain his financial responsibility.

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 33 years old, and he has worked for a government contractor for the previous 15 months. His finances were adversely affected by underemployment, unemployment, and disease. His spouse has been attending college for the previous two years, and she has not been employed outside their home.

The evidence against grant of a security clearance is detailed in the financial considerations analysis section, *supra*, and this evidence is more substantial than the evidence of mitigation. Applicant’s September 27, 2024 SOR alleges, and Applicant admitted, he has three delinquent debts totaling \$36,122. He did not establish that he was unable to make more timely and significant progress resolving his SOR debts. 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

Subparagraphs 1.a, 1.b, and 1.c:

Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge