



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



Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

04/03/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to demonstrate that he has acted responsibly to address and resolve his financial delinquencies. He did not provide sufficient evidence to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On October 4, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960, and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, 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.

Applicant provided an undated response to the SOR (Answer) and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) judge. On November 7, 2024, the case was assigned to me. On December 6, 2024, DOHA issued a notice of hearing, setting the hearing for January 7, 2025. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered seven Government exhibits (GE) 1 through 7; Applicant offered six exhibits labeled as Applicant exhibits (AE) A through F; there were no objections, and all proffered exhibits were admitted into evidence. I held the record open until January 28, 2025, in the event either party wanted to supplement the record with additional documentation. Applicant requested an extension, and I granted him an additional month to provide documentation. He timely provided nine documents, AE G through O, which were admitted without objection. On January 13, 2025, I received the hearing transcript (Tr.), and the record closed on February 28, 2025.

Findings of Fact

In Applicant's undated Answer, he admitted 11 debts (SOR ¶¶ 1.a through 1.d, and 1.g through 1.l), and he denied one debt (SOR ¶ 1.f) alleged under Guideline F.

Applicant is 49 years old. He has never been married and he has a son who he claimed was 19 years old during the hearing and resides with his mother. The security clearance application, however, lists his son's age at nine. Applicant earned an associate degree in criminal justice in 2010, and he earned another associate degree in 2023. Since April 2024, he has worked for a government contractor as an integration specialist. This is his first application for a security clearance. (Tr. 20-21, 70; GE 1)

Financial Considerations

Applicant stated he experienced financial hardship when he was placed on unpaid administrative leave in September of 2023 for approximately four months after he lost his interim security clearance. In about April 2024, he was hired by a government contractor, but in November 2024 to early January 2025, he was laid off. The SOR alleges 11 delinquent accounts totaling about \$45,000. (Tr. 30-33)

SOR ¶ 1.a alleges Applicant filed for Chapter 7 Bankruptcy in about June 2020. The bankruptcy was discharged in about October 2020. Applicant stated that during the COVID-19 pandemic his work hours were reduced. He estimated that he had between \$30,000 to \$50,000 of liabilities included in his bankruptcy. He stated that he soon found himself in financial trouble following his bankruptcy after he accepted a new job with lower pay and was eventually placed on four months of unpaid administrative leave. (Tr. 21-29)

SOR ¶ 1.b alleges Applicant is indebted for child support arrearage in the approximate amount of \$39,110. He submitted documentation dated February 25, 2025,

which showed his arrearage balance was \$31,990, and he had been making \$50 monthly payments since at least June 2024. At this rate, Applicant should be able to satisfy his delinquent child support balance in about 53 years. (Tr. 33-40; AE D, E, F, G)

SOR ¶ 1.c alleges Applicant is indebted to a creditor for a credit card account referred for collection in the amount of \$1,650. He submitted an October 2023 settlement agreement, in which he agreed to settle the account for about \$495. At the hearing, he admitted that he had not fully paid this account due to being placed on administrative leave. He submitted a February 2025 settlement agreement showing that the creditor would accept a payment of about \$578 to settle the \$1,650 outstanding balance. Applicant did not submit any evidence that he paid \$578 to settle this debt. The account remains unresolved. (AE A, J; Tr. 40-41)

SOR ¶ 1.d alleges Applicant is indebted to a third-party debt collection service in the approximate amount of \$1,291, for unpaid patio furniture. Applicant admitted that he had disputed this account twice with the credit bureaus, and he was waiting to find out the result of his filed dispute. He submitted a February 2025 settlement agreement showing that the creditor would accept \$650 to settle this account if he made a \$325 payment in February and March 2025. Applicant did not submit any evidence that he paid any money to settle the debt. The account remains unresolved. (AE H; Tr. 41-45)

SOR ¶ 1.e alleges Applicant is indebted to a bank for an account referred for collection in the approximate amount of \$932. At the hearing, he testified that he had settled this account, and it was fully resolved. After the hearing, he submitted a January 2025 payment plan that he would pay a total of \$804 by making monthly \$134 payments from January 2025 until June 2025. Applicant did not submit any documentation that he made any of the payments in accordance with the payment plan. The account remains unresolved. (AE I; Tr. 45-46; GE 7)

SOR ¶ 1.f alleges Applicant is indebted to a finance company for a credit card account referred for collection in the approximate amount of \$556. In his Answer, he stated that the company removed his account and requested he call them. When he called the company, the phone number was no longer in service. Applicant submitted a March 2023 settlement agreement that disclosed a payment of about \$417 would settle the account. During the hearing, he testified that the creditor continued to send his account to different collection agencies. He stated he recently received a court notice that he must appear in court that month. The creditor filed a complaint against him to collect about \$550. He stated that when he goes to court, he would be willing to make payments on this account, or just pay it, to get this resolved. He did not provide documentation that he paid or settled this account. This debt remains unresolved. (Tr. 46-49; AE B, K; GE 7)

SOR ¶¶ 1.g through 1.l allege Applicant is indebted for delinquent student loans with a total combined balance of approximately \$21,070. He testified that he was accepted into an income-driven program, and he does not need to make a payment until

June 2025. He provided December 2024 paperwork that showed his student loans were in forbearance and considered current. The total balance of student loans reflected on a March 2024 statement was approximately \$53,488. (Tr. 49-51; AE C, K)

A current credit report from January 2025 showed that Applicant opened an account with a bank to finance his car in November 2022, and he was to make monthly payments of \$736. The credit report showed that he has been 90 days late with these payments on more than three occasions, leaving him with a past due balance of \$2,167. Applicant testified that he was working with the creditor to get caught up with this account. He denied the creditor had ever threatened repossession of the car. This information was not alleged in the SOR. (Tr. 51-53; GE 7)

The current credit report showed, following his Chapter 7 bankruptcy discharge, Applicant opened an account with a cellular phone service provider. As of October 2024, he was delinquent in the amount of \$1,129. He filed a dispute with this creditor because he switched to another cellular service when his contract ended with this creditor. He believes the charges are inaccurate. This information was not alleged in the SOR. (Tr. 53-55; GE 7)

Another delinquent account with a third-party collection agency was listed on Applicant's January 2025 credit report. It showed he was past due in the amount of \$304 with an insurance company. An additional entry showed that Applicant was delinquent in the amount of \$617, for an account with a quick loan – fast cash type of company. This information was not alleged in the SOR. After the hearing, he submitted documentation that the cellular phone provider was willing to settle his account with a payment of \$228 by March 2025. He did not provide documentation of a payment on this account. (Tr. 66-67; GE 7; AE N)

Applicant provided documentation that showed he made approximately \$28 per hour at his current place of employment. His child support payment of \$25 was automatically deducted from his bi-weekly paychecks. He stated he files his state and federal income tax returns in a timely manner, but he also noted that he owes about \$2,400 in unpaid federal taxes from tax year 2023 that remain unresolved. He admitted that he has participated in financial counseling with a bank counselor in May 2024 and in 2020 when he filed for bankruptcy. He does not maintain a monthly budget. (Tr. 55-60, AE L)

Department Counsel made a motion to amend the SOR to conform with the January 2025 credit report in the record and Applicant's testimony. She requested two delinquent debts be included under Guideline F in the SOR, as follows:

SOR ¶ 1.m [Applicant] is indebted to WFBNA Auto on an account that is past due in the approximate amount of \$2,167, with a total loan balance of

\$22,027. As of the date of this hearing, the account remains delinquent. (Tr. 71)

SOR ¶ 1.n [Applicant] is indebted to the federal government for delinquent taxes in the approximate amount of \$2,400 for tax year 2023. As of the date of this hearing, the taxes remain unpaid. (Tr. 71)

Applicant did not object to the two added SOR allegations, and I granted Department Counsel's motion to amend the SOR. I held the record open until January 28, 2025, and granted his request for an extension until February 28, 2025, in part, so Applicant could supplement the record with additional information for the two recently added SOR allegations. (Tr. 71-73; e-mail communication)

Any adverse information not alleged in the SOR will not be considered for disqualification purposes but may be considered in evaluating application of mitigating conditions and in applying the whole-person concept. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

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 DNI 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 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. Sept. 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

Guideline F, 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. . . . 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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts," "(c) a history of not meeting financial obligations," and "(f) ...failure to pay annual Federal, state, or local income tax as required."

The amended SOR alleges seven delinquent debts totaling approximately \$41,000, to include unpaid federal taxes and child support arrearage. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions.

The following financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (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;
- (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 or provides evidence or actions to resolve the issue; 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 bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014)

It is undisputed that Applicant's indebtedness was caused by his unemployment and underemployment, which are circumstances beyond his control. Notwithstanding the events that affected his finances, Applicant must demonstrate that he acted responsibly under the circumstances.

Applicant is paying \$50 a month on his child support arrearage of over \$31,000. It is clear that he has not been financially responsible in contributing for his son's expenses, such as housing, food, clothing, and healthcare, as ordered by a court, over a long period of time. It took legal action to get him to pay this debt, even though he stated his son is no longer a minor. Applicant also admitted that he has not paid his federal tax debt of approximately \$2,400 for tax year 2023. A person who fails to fulfill his legal obligations, such as paying child support or paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018)

Applicant submitted several post-hearing documents that consist of future settlements and payments plans that should resolve debts at some point in the future. "Promises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner." ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019). He did not resolve the debts alleged in SOR ¶¶ 1.b through 1.f, 1.m, and 1.n.

Applicant has received financial counseling, but he does not have a monthly budget in place. Other than obtaining a forbearance on his student loans, there is nothing in the record that shows he successfully disputed, settled, paid, or submitted a history of payments on any of the delinquent accounts alleged in the SOR. The January 2025 credit report showed that he continues to develop delinquent debt, which demonstrates he continues to be irresponsible with his financial obligations. Overall, I find Applicant has a

history of serious and recurring financial difficulties. None of the mitigating conditions apply. Guideline F security concerns have not been 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 commonsense 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.

Failure to comply with tax and child support laws suggests that an applicant has a problem with abiding by well-established government legal rules and regulations. I conclude Applicant has not met his burden of proof and persuasion. In the event he may wish to alleviate his financial security concerns and revisit his security clearance eligibility in the future, he should consider additional financial counseling, a workable household budget, and a pattern of attentiveness to his financial obligations. At the present time, Applicant did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

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.f, 1.m, and 1.n:	Against Applicant
Subparagraphs 1.g – 1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge