



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



In the matter of: )  
 )  
 ) ISCR Case No. 22-00005  
 )  
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Applicant for Security Clearance )

## Appearances

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: *Pro se*

01/03/2025

## Decision

LOUGHREAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines E (personal conduct) and F (financial considerations). Eligibility for access to classified information is granted.

## **Statement of the Case**

On April 1, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and F. Applicant responded to the SOR on April 5, 2022, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 1, 2022. The hearing convened as scheduled on January 10, 2023.

## **Evidentiary and Procedural Rulings**

## Evidence

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A and B, which were admitted in evidence without objection. Department Counsel's motion to amend the SOR by adding allegations that Applicant failed to file his federal (SOR ¶ 1.g) and state

(SOR ¶ 1.h) income tax returns for tax years 2020 and 2021 was granted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted an email and attached documents that I have marked AE C and C(1) through C(7) and admitted in evidence without objection.

The previous administrative judge was unable to complete the decision, and the case was reassigned to me on October 16, 2024. I informed Applicant that I had the current record, which consists of the pleadings (SOR and response), transcript, and exhibits, including his exhibits submitted post-hearing. I offered him three choices on how to proceed: 1) I would issue the decision based on the current record; 2) I would give him reasonable time to supplement the record with additional documentary evidence; 3) we would go back on the record, and he could present additional evidence, by way of testimony, witnesses, and documents, and I would allow opening statement and closing argument. He chose to supplement the record with emails and attached documents that I have marked AE D through H and admitted without objection. Email traffic on the matter is marked Hearing Exhibit (HE) IV.

### **Findings of Fact**

Applicant is 56 years old. As of the date of the hearing, he was an employee of a defense contractor. He had worked for that company or a predecessor company since August 2020. He served on active duty in the U.S. military from 1987 until he was honorably discharged in 1991. He served in the reserve for a few years after he left active duty. He earned a bachelor's degree in 1995. He has never married, and he has no children. (Tr. at 12-13, 23-29; GE 1)

Applicant was terminated in July 2019 from a job he held since 2005. He was terminated when an application was discovered on his computer after the director told him to remove it. Applicant stated that he thought he complied and removed the application, but it may have been reinstalled. He admitted that he was counseled for missing one or two meetings, but he stated that the real reason for his termination was that a new director was hired, and the director wanted a new team. He was unemployed from July 2019 to September 2019 and again from February 2020 until August 2020. (Tr. at 66-75; Applicant's response to SOR; GE 1, 4)

In addition to unfiled income tax returns (SOR ¶¶ 1.g and 1.h), the SOR alleges five delinquent debts totaling about \$24,345 (SOR ¶¶ 1.a-1.e) and that Applicant owed a deficiency balance on a mortgage after his home was lost to foreclosure (SOR ¶ 1.f). Applicant attributed his financial difficulties primarily to the loss of his job in 2019. However, several of the debts, including his mortgage loan, became delinquent before he lost his job. During his background interview in December 2020, he stated that he got behind on his bills by living beyond his means. He stated that he was spending too much and not paying enough attention to his bills. He testified that because he did not have a pressing need for credit, he did not pay much attention to his credit report. (Tr. at 31-34, 39, 41-42, 62-63; Applicant's response to SOR; GE 4)

The \$8,145 charged-off credit card debt alleged in SOR ¶ 1.a is listed on the three credit reports offered by the Government. All three credit reporting agencies listed it on the October 2020 combined credit report as an individual account with an activity date of August 2018. The February 2022 and December 2022 Equifax credit reports list that Applicant was only an unauthorized user of the account and not personally liable for it. Applicant did not argue that he was not responsible for the debt. He testified that he had negotiated a payment plan with the creditor about two weeks before the hearing. He admitted that receipt of the SOR spurred his action for this and the other SOR debts. In his initial post-hearing submission, he documented a \$254 payment in January 2023. The creditor issued an IRS Form 1099-C (Cancellation of Debt) in August 2020 cancelling \$4,822 in debt. That is consistent with a debt being settled for less than full value. (Tr. at 30-36; Applicant's response to SOR; GE 1-5; AE C, C(1), D, F)

SOR ¶ 1.b alleges a \$7,580 charged-off debt to a bank. Applicant had not paid that debt as of the date of his hearing. He stated that the creditor was on his list to contact, but he had not contacted the creditor at that time. He wrote about the debt in a December 2024 email, "I paid on it, but I didn't get any paperwork for them, just talked to them on the phone and they took money out of my account for a while then stopped abruptly." He submitted a recent credit report that had the entry, "Paid, Closed. \$7,580 written." The account did not have a balance. (Tr. at 37-38; Applicant's response to SOR; GE 1-5; AE C, C(2), D, G, H)

In December 2022, Applicant initiated a \$154 per month payment plan for the \$2,471 delinquent debt alleged in SOR ¶ 1.c. The plan called for 15 payments, with the last payment made in March 2024. In April 2024, the creditor confirmed the last payment had been received and the debt was paid. (Tr. at 40-42; Applicant's response to SOR; GE 2-5; AE A, C, C(3), D, E)

Applicant and the collection company handling the \$5,462 delinquent debt alleged in SOR ¶ 1.d agreed in December 2022 to resolve the debt with an initial \$122 payment in December 2022, followed by \$132 monthly payments through April 2026, and a final \$40 payment in May 2026. He provided proof in his February 2023 post-hearing submission that he made the first two payments. Additional payments were scheduled to be automatically deducted from his account. He did not provide documentary proof of his additional payments, but he submitted a December 2024 Experian credit report that did not list the account. (Tr. at 42-47; Applicant's response to SOR; GE 2-5; AE B, C(7), H)

SOR ¶ 1.e alleges a \$689 collection account owed to what appears to be a utility company for a city. The debt is apparently associated with the house that Applicant lost to foreclosure (see below). The debt is listed by all three credit reporting agencies on the October 2020 combined credit report with an activity date of October 2020. The debt is not listed on the later credit reports. Applicant initially thought the debt was related to state taxes. He was unable to contact the creditor by the time the record initially closed in February 2023. He did not submit any additional information about the debt when the record was reopened. (Tr. at 47-52; Applicant's response to SOR; GE 2-5; AE B, H)

SOR ¶ 1.f alleges a deficiency balance on a Department of Veterans Affairs (VA) mortgage after Applicant's home was lost to foreclosure. He lost his home to foreclosure in about 2019, but there is no evidence that he owes a deficiency balance. All the credit reports in evidence report a \$0 balance. (Tr. at 52-58; Applicant's response to SOR; GE 1-5; AE B, H)

Applicant did not file his federal and state income tax returns when they were due for tax years 2020 and 2021 (SOR ¶¶ 1.g and 1.h). He testified that he had enough withheld from his pay so that he usually received refunds. He stated that because he did not owe taxes, it was not something that was pressing for him. He retained a tax service in January 2023 after he was asked about the returns during his hearing. The tax service prepared his federal and state income tax returns for tax years 2020 through 2022 in January 2023. The tax service indicated that the returns show that he was due a federal refund of \$3,114 and refunds of \$114 and \$275 for two states for 2020. The tax service indicated that he owed the IRS \$104 and was due a state refund of \$127 for 2021. (Tr. at 60-62, 80; AE C, C(4)-C(6))

Applicant testified that his finances were better. He was working a second job that provided some supplemental income. He was able to pay his bills and make payments toward his delinquent debts. He did not report any financial counseling. The recent credit report did not list any new delinquent debts since his hearing. (Tr. at 58-60, 63-65; AE H)

## Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an Applicant's suitability 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 to be 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, administrative judges apply the guidelines 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(c), 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the Applicant or proven by Department Counsel.” The Applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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. 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 guideline notes 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 history of financial problems, including delinquent debts and income tax returns that were not timely filed. The above disqualifying conditions are applicable.

Conditions that could mitigate the 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 attributed his financial difficulties primarily to the loss of his job in 2019. However, several of the debts, including his mortgage loan, became delinquent before he lost his job. He also admitted that he was living beyond his means and not paying enough attention to his bills. There is insufficient evidence for a finding that his financial problems were largely beyond his control. AG ¶ 20(b) is not applicable.

Applicant admitted that receipt of the SOR is what spurred his action to address his finances. Had this case been decided in a timely manner, his security clearance would have likely been denied. It was not, and it is now almost two years since his

hearing. During that time, he has filed his back tax returns and paid or otherwise resolved most of his debts. The recent credit report did not list any new delinquent debts since his hearing.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant does not present a perfect case in mitigation. However, he has done enough to convince me that his finances are back on track. I find that Applicant's current finances do not cast doubt on his judgment, reliability, trustworthiness, and ability to protect classified information. AG ¶¶ 20(a) and 20(g) are applicable. AG ¶¶ 20(c) and 20(d) are partially applicable. Security concerns about Applicant's finances are mitigated.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 2.a alleges that Applicant was "fired for cause" from his employment in 2019, and that he was "not eligible for rehire." The only evidence as to why Applicant was terminated came from him. He stated that he was terminated when an application was discovered on his computer after the director told him to remove it. He thought he complied and removed the application, but it may have been reinstalled. That conduct is sufficient to raise security concerns under AG ¶¶ 16(d) and 16(e).

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant testified that the real reason for his termination was that a new director was hired, and the director wanted a new team. That testimony is undisputed by any other evidence. Applicant's conduct is dated and does not cast doubt on his current reliability, trustworthiness, or good judgment. The above mitigating conditions are applicable, and personal conduct security concerns are 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct and 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:	For Applicant
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge