



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



In the matter of:)
)
) ISCR Case No. 23-02642
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/03/2025

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 January 10, 2020, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On December 1, 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 (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 June 5, 2024, Applicant provided his response to the SOR. On June 25, 2024, Department Counsel was ready to proceed. On March 18, 2025, the case was assigned to another administrative judge. On March 25, 2025, the Defense Office of Hearings and Appeals issued a notice scheduling the hearing on May 9, 2025. (HE 1) On April 10, 2025, the case was transferred to me for administrative reasons. The hearing was held as scheduled on May 9, 2025, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered seven exhibits into evidence, and Applicant offered one exhibit into evidence. (Tr. 20-21; GE 1-GE 7; Applicant Exhibit (AE) A) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 21-22) On May 22, 2025, DOHA received a copy of the transcript. The record was not held open after the hearing for post-hearing documentation. (Tr. 51)

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, 1.i, and 1.k, and he denied the remaining SOR allegations. He also provided some mitigating information. His admissions are accepted as findings of fact.

Applicant is 44 years old, and he has been employed working on a Navy training aircraft for the previous 42 months. (Tr. 6, 9) In 2000, he graduated from high school. (Tr. 6) He completed two college courses. (Tr. 7) He was married in 2000 and divorced in 2017. (Tr. 7, 25-26) He married his current spouse in 2017, and he has an eight-year-old daughter who lives with him. (Tr. 7-8) His spouse does not work outside their home. (Tr. 28)

Applicant served in the Navy from 2004 to 2019, and he received an honorable discharge as a petty officer third class (E-4). (Tr. 9-10, 13) His Navy specialty was avionics technician. (Tr. 11) In 2018, he received nonjudicial punishment (NJP) for a violation of Article 92, Uniform Code of Military Justice (UCMJ) (violation of a lawful regulation) because a computer hard drive was left behind unsecured when his unit moved. (Tr. 10-11) He did not explain how his conduct violated a regulation. He received a reduction from petty officer first class (E-6) to petty officer second class (E-5) and forfeiture of one half of one month's pay for two months. (Tr. 11) In July 2019, he received NJP for missing watch in violation of Article 86, UCMJ. (Tr. 23) In October 2019, he received NJP for violation of Article 107, UCMJ, (making a false statement) because of conflicting statements he made concerning his relationship with his spouse pertaining to an incident at a hotel. (Tr. 12-13, 23-24) He was reduced to petty officer third class (E-4). (Tr. 13) Two weeks after his third NJP, he was discharged from the Navy. (Tr. 13) He is not currently receiving disability pay from the Department of Veterans Affairs (VA); however, he has applied for VA disability. (Tr. 25-26)

Financial Considerations

Applicant had some periods of unemployment after leaving the Navy in December 2019. (Tr. 29) The longest period of unemployment was from June 2021 until his current employment, which started in October 2021. (Tr. 30) His current hourly salary is \$45 an hour. (Tr. 31) A week before his hearing, he was able to start receiving 10 hours a week of overtime pay, which is \$67 an hour. (Tr. 32)

Applicant's December 1, 2023 SOR alleges, and his March 13, 2020, February 16, 2023, September 12, 2023, June 14, 2024, and/or May 2, 2025 credit bureau reports (CBRs) state, he has 14 delinquent debts totaling \$68,954 as follows: 1.a (\$15,959) (Tr. 35; GE 1 at 5); 1.b (\$13,202) (Tr. 35; GE 4 at 6); 1.c (\$12,227) (Tr. 35-36; GE 6 at 1); 1.d (\$9,169) (Tr. 36; GE 5 at 4); 1.e (\$3,087) (GE 2 at 13, 14; GE 3 at 6; GE 4 at 3); 1.f (\$1,093) (GE 4 at 3; GE 5 at 4; GE 6 at 4); 1.g (\$961) (Tr. 36-37; GE 4 at 3); 1.h (\$743) (GE 4 at 3; GE 5 at 4; GE 6 at 4); 1.i (\$617) (Tr. 37-38; GE 6 at 3); 1.j (\$305) (Tr. 37; GE 4 at 4); 1.k (\$10,216) (Tr. 38; GE 2 at 13); 1.l (\$865) (Tr. 38; GE 2 at 14); 1.m (\$305) (GE 2 at 15), and 1.n (\$205) (Tr. 39; GE 2 at 15). In the last 10 years, he has had two vehicles repossessed. (Tr. 49)

Applicant said he intends to resolve the debts on his credit report; however, he did not make any payments or make any efforts to pay the SOR debts prior to his hearing. (Tr. 22, 35-36) He may have disputed the debts in SOR ¶¶ 1.g and 1.l because he was unfamiliar with the accounts. (Tr. 36-38, 48) He disputed the debt in SOR ¶ 1.n because he did not sign a lease for the apartment related to that debt. (Tr. 39) The debts in 1.l and 1.n do not appear on his May 2, 2025 CBR. (GE 6)

SOR ¶¶ 1.e, 1.f, 1.h, and 1.m are medical debts. One or more of them appear on each of his CBRs. (Tr. 39; GEs 2, 3, 4, 5, 6) Applicant said he did not recognize the debts. (Tr. 39-41, 48)

Applicant's May 2, 2025 CBR shows five non-SOR delinquent debts for \$376, \$2,846, \$369, \$478, and \$585. (Tr. 41; GE 6) A balloon payment of \$3,000 was due on the debt with a current balance of \$2,846 (Debt B) in December 2024. (Tr. 42) Debt B related to a vehicle he purchased. (Tr. 48) From January 2025 to April 2025, he made four payments to address Debt B of \$502, \$250, \$560, and \$503. (AE A) After he resolves Debt B, he intends to continue to address his other debts. (Tr. 42)

Applicant owes about \$3,000 in delinquent federal income taxes. (Tr. 44) A creditor may have forgiven a debt, and the IRS may have decided this was income, which would result in additional taxes being due. (Tr. 44) He has not attempted to establish a payment plan with the IRS. (Tr. 44)

Applicant has \$1,700 in his checking account and about \$37,000 in his retirement account. (Tr. 45) He discussed his finances with a financial counselor, and he has a remainder of about \$800 each month after paying his bills. (Tr. 45-46) A financial counselor provided advice to him about how to establish his financial responsibility. (Tr. 50) He emphasized that he intends to pay his debts. (Tr. 53-54)

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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

AG ¶ 19 includes two disqualifying conditions that are established in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” 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. “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 divorced in 2017, and he was unemployed for several months after his discharge from the Navy. 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 [his or] 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 SOR alleges 14 delinquent debts totaling \$68,954. “[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.*

Applicant disputed the SOR ¶¶ 1.I (\$865) and 1.n (\$205) debts, and they have been dropped from his May 2, 2025 CBR. He is credited with mitigation of those two debts.

Applicant indicated several other SOR debts were dropped from his credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

Applicant's IRS debt, NJPs, and new delinquent debts on his May 2, 2025 CBR were not alleged in the SOR. These issues will not be considered for disqualification purposes; however, they will be considered: "(a) in assessing [his] credibility; (b) in evaluating [his] evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether [he] has demonstrated successful rehabilitation; and (d) in applying the whole-person concept." ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022) (citing ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)).

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was 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 own interests. In this case, [taking financial actions] after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In this instance, Applicant took some actions to pay Debt B in 2025 after the SOR was issued. However, the Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her financial problem, and the fact that applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of applicant's security worthiness considering his longstanding prior behavior evidencing irresponsibility. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an applicant's course of conduct and employing an "all's well that ends well" analysis as inadequate to support approval of access to classified information).

Under all the circumstances, Applicant failed to present sufficient evidence to mitigate any of the debts in the SOR except for the debts in ¶¶ 1.l and 1.n. I am not confident that he will establish payment plans, pay, or otherwise resolve most of the unresolved SOR debts, and maintain his financial responsibility. Financial considerations security concerns are not mitigated under AG ¶ 20.

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 44 years old, and he has been employed working on a Navy training aircraft for the previous 42 months. In 2000, he graduated from high school. He completed two college courses. He served in the Navy for 15 years, and he received an honorable discharge. He has applied for a VA disability rating.

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. 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 through 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For 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