



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



## **Appearances**

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

01/17/2025

## Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guideline F (financial considerations). Eligibility for access to classified information is denied.

## **Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 6, 2022. On September 29, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 17, 2023, and requested a hearing before an administrative judge. The case was assigned to me on June 7, 2024. On September 9, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for September 27, 2024. The hearing was convened as scheduled.

On September 19, 2024, Department Counsel amended the SOR to add SOR ¶¶ 1.h through 1.j. Applicant did not respond to the SOR amendment prior to the hearing. He acknowledged receipt of the new allegation at the hearing, expressed his desire to proceed with the hearing as scheduled, and answered the amended allegations. (Tr. 6, 38-39) I initially left the record open for two weeks to provide Applicant an opportunity to submit documentary evidence in light of the new allegations. I also informed him that any request for additional time needed to submit documents would be liberally granted.

At the hearing, Department Counsel offered Government Exhibit (GE) 1 through GE 10, which were admitted in evidence without objection. Applicant previously submitted documentary evidence with his Answer to the SOR, which I labeled as Applicant's Exhibit (AE) A. In December 2024, I provided Applicant a final opportunity to submit documentary evidence for consideration. No additional documentary evidence was received. DOHA received the hearing transcript (Tr.) on October 11, 2023.

### **Findings of Fact**

In his Answer to the initial SOR, Applicant admitted SOR ¶¶ 1.a through 1.c, 1.e through 1.g, and denied SOR ¶ 1.d. He answered the amended SOR at the hearing, and admitted SOR ¶¶ 1.h through 1.j. Applicant's admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 44 years old. He earned his high school diploma in 1999. Shortly after graduation, he enlisted in the active duty Army, and served from 1999 until his discharge in September 2001, under unfavorable conditions. Applicant learned his mother was terminally ill, took leave to visit her, and did not return to the Army at the end of his leave period. He was charged with being absent without leave (AWOL), court-martialed, and discharged under other-than-honorable conditions. (GE 1, 2; Tr. 16-19)

Applicant enrolled in a technical college in 2006, and was awarded an associate's degree in 2008. He has never been married, and does not have children. (GE 1, 2; Tr. 15-20)

Applicant is a self-employed, independent contractor sponsored by a federal defense contractor with whom he has worked renovating offices since about November 2020. He said his work is sporadic and inconsistent, and he earns about \$200 per day when working with the contractor. He has been unable to work with the contractor since beginning the security clearance process. He has supplemented his income doing part-time jobs. (GE 1, 2; Tr. at 20-22) When working consistently, he estimated his current take-home pay to be about \$3,200 per month. (GE 3 at 8; Tr. 22-23)

From January 2017 until about November 2020, Applicant worked as an analyst for a state government organization. He said he resigned to take care of family matters after his mother passed away. From about August 2015 until January 2017, he worked as a driver for a private company. He said he has experienced periods of unemployment,

and when this happens, he finds odd jobs repairing cars or doing home repair services for income. (Tr. 45-56)

Applicant and his cohabitant girlfriend (partner) moved to a larger rental home to enable him to move his elderly father from another state to reside with them. Applicant and his partner each pay one-half of the monthly rent, currently \$1,600 each. He pays all of the monthly bills for their home, and supports his father financially, for about \$1,000 per month. He pays \$350 per month for his student loan. He said he has about \$800 remaining after paying all bills. He has about \$2,000 saved in the bank, and does not have a retirement account. (GE 2; Tr. 20-25, 45-48)

Applicant completed his SCA in September 2022. In Section 26 – Financial Record, he did not disclose any tax or financial issues in his response to the questions. He responded “no” to the question of whether, **in the last seven (7) years**, he had “failed to file or pay Federal, state, or other taxes when required by law or ordinance?” He responded “no” to the questions of whether, **in the last seven (7) years**, “you had bills or debts turned over to a collection agency” and “you had any account or credit card suspended, charged off, or cancelled for failing to pay as agree.” In his December 2022 background interview with a DOD investigator, he said he rushed to complete his SCA and did not list his financial delinquencies. He volunteered, and openly discussed his financial issues with the investigator, including student loans that were past due at the time, and consumer debts he was aware of. He did not discuss any tax issues. (GE 1, 2; Tr. 42-45)

The SOR, as amended, alleged 10 delinquent debts totaling about \$55,400. Applicant admitted all debts, except the debt in SOR ¶ 1.d for \$654, an account he said he did not recognize. His admissions are supported by credit bureau reports (CBRs), state tax liens, and admissions made during his background interview and at the hearing. (SOR, as amended, SOR Answer, GE 1 - 10)

Applicant said he took a long time to address his financial delinquencies because he was worried about making ends meet, surviving financially. (Tr. at 46) In about August 2023, he hired a credit repair service (CW) to help him address his delinquent debts. CW charged \$200 to start the service, and \$100 per month. He said CW advised him on actions for him to take, but did not provide the services they promised. He cancelled their service in about January 2024. (Tr. 27, 30, 50-51)

Applicant said he filed his federal and state income tax returns on time each year. In 2024, he filed a six-month extension to file his income tax returns later. As an independent contractor, he said he paid state income taxes regularly, he knew he owed the state for income taxes he was unable to pay at the time he filed his return, and that he learned how much he owed in about August 2024. He said he has an ongoing payment plan with the state tax authority, and that he was current on the plan. However, he did not provide documentary evidence to support this assertion. (Tr. 39-41, 46,48-49, 52-55; GE 8 - 10)

The evidence regarding the SOR allegations is summarized below:

**SOR ¶ 1.a (\$18,663):** Applicant admitted this debt for a car he purchased in about 2016. He said he paid \$230 per month, and his payments were on time for about eight months. He subsequently missed about three payments, and the creditor repossessed the car. He contacted the creditor to retrieve the car, but the creditor offered it back for a sum he could not afford. The debt was charged off in about September 2017. In August 2023, he requested CW's assistance to help resolve the debt. CW informed him the debt was charged off, it no longer existed, and there was no way he could pay it. He did not reach out to the creditor again. (GE 2, 4, 5; Tr. 24-25)

**SOR ¶ 1.b (\$3,046):** Applicant admitted this debt for breaking a lease agreement. The debt was assigned in November 2019. He requested CW's assistance with resolving the matter, and after consultation, he contacted the creditor, negotiated settlement, and paid the debt in November 2023. The 2023 CBR shows Applicant initially disputed the debt, but did not advance this argument in his Answer or at the hearing. (GE 2, 4, 5; Tr. 26-27; AE A) This debt is resolved.

**SOR ¶ 1.c (\$998):** Applicant admitted this debt. He moved, and was not allowed to transfer his previously contracted television service to the new location. The debt was assigned in June 2021. He initially disputed the debt, but did not advance this argument in his Answer or at the hearing. After consultation with CW, he contacted the creditor, negotiated settlement, and paid the debt in October 2023. (GE 4, 5; Tr. 27-28; AE A) This debt is resolved.

**SOR ¶ 1.d (\$654):** Applicant denied this debt in his Answer, and at the hearing. He said did not recognize this charge, which was from a gas company located in a different city from where he lives. He contacted the creditor in October 2023, and was informed the account did not exist, that there was no debt. It is noted the 2023 CBR lists the debt as being assigned in 2020, and the narrative section indicates it was "affected by a natural/declared disaster." (GE 4, 5, 7; Tr. 28-30)

**SOR ¶¶ 1.e (\$626) and 1.f (\$525):** Applicant admitted both credit card debts. He said he stopped paying these debts because he lacked the funds to do so. Both debts were assigned in June 2018. After consulting CW, he contacted each creditor, negotiated settlement, and paid both debts in November 2023. (GE 4, 5, 7; Tr. 30-32; AE A) These debts are resolved.

**SOR ¶ 1.g (\$22,605):** Applicant admitted this debt. He purchased a Kia Sorento financed through a dealer in 2019. After about four months, he was involved in a car accident. He rear-ended another car, his car caught on fire, and was towed to repair shop to be repaired. His car was insured. The dealer removed the car from the repair shop. He did not understand why the dealer removed the car. He informed the dealer he would catch up on payments and take back the car, but that it needed to be repaired first. The car was believed to have a manufacturer's defect, but Applicant said he did not have the funds to pursue a claim or legal action for it. He was behind one month on payments when

the accident occurred, and had received a late payment notice. He went to the dealer to retrieve the car, but they were unable to locate it. He learned the car was repossessed before it was repaired. The 2023 and 2024 CBRs indicate the car was a “voluntary surrender.” The 2024 CBR lists the account condition as “unpaid balance reported as loss.” (GE 4, 5, 7; Tr. 32-38) This debt is unresolved.

**SOR ¶¶1.h (\$1,900.73), 1.i (\$2,344.76), and 1.j (\$4,074.19):** These three state tax liens debts are the subject of a pre-hearing SOR amendment. Applicant admitted all three debts, which are established by three state tax lien documents. (GE 8 - 10) Applicant said he did not know the year the taxes were assessed, he never received official notice by mail from the state, and he did not go to court for them. He said he learned about the problem in about August 2024. The state suspended his taxes, and he was allowed to do a payment plan for the combined total debt. He said his payments were \$236 per month, for 60 months. He filed his income tax returns on time. His work as a self-contractor made his income taxes more complicated. He did not submit documentary evidence of his agreement with the state; nor did he submit receipts to show compliance with the agreement. (GE 8, 9, 10; Tr. 38-41) These debts are unresolved.

In 2021, Applicant and his partner took two vacations to the Caribbean. He said their vacations were financed by his partner, with Applicant contributing about \$600. He and his partner occasionally vacation to neighboring states to visit family and friends. He does not owe any federal income taxes. He has not received financial counseling, but is not opposed to it. CW did not provide financial counseling services. His said his current financial situation is not great, but he is making it work. He finds odd jobs, like repairing cars or doing home repair services to help. (Tr. 45-56)

## Policies

“[N]o 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 applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” EO 10865 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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* 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531. See also AG ¶ 2(b).

## Analysis

### **Guideline F, Financial Considerations**

The security concern under this guideline 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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

The SOR allegations are established by Applicant's admissions, the credit bureau reports, state tax lien documents, and his admissions during his background interview and at the hearing. AG ¶¶ 19(a), 19(c), and 19(f) apply.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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; and

AG ¶ 20(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 has a history of financial challenges since at least 2016. He is a self-employed independent contractor, and though he has worked with and is being sponsored by a defense contractor, he has been unable to work with the contractor since about December 2022. He finds sporadic work that nears the \$3,200 per month he received while working with the contractor. He also financially supports his elderly father, who lives with him. He moved his father from a different state, which required him and his partner to rent a larger, more expensive home. Applicant's situation created a financial circumstance beyond his control. His actions in addressing some, but not all of his debts were reasonable and responsible.

Applicant is credited hiring a credit repair service for advice and assistance with paying his delinquent debts. He successfully negotiated and paid the debts in SOR ¶¶ 1.b, 1.c, 1.e, and 1.f. AG ¶ 20(d) applies to these debts. After consistently and credibly denying the debt in SOR ¶ 1.d, he successfully refuted it. AG ¶ 20(e) applies to this debt.

Applicant also established that he was unable to pay the debt in SOR ¶ 1.a, a repossessed car from a loan he made in 2016. He was in a different financial situation at the time, and did not have the funds to pay. When he attempted to pay the loan in 2023 with the assistance of his credit repair service, there was no longer a way for him to pay the debt. He was told that the debt was no longer in existence. His actions with respect to this debt were not unreasonable or irresponsible under the circumstances. AG ¶ 20(e) applies to this debt.

Applicant's debts in SOR ¶¶ 1.g through 1.j remain unresolved. These debts include a consumer debt for more than \$22,000, and three unpaid state tax liens totaling more than \$8,000, combined. These debts are the most significant in the SOR. They are recent, ongoing, and Applicant has not provided proof of actions taken to resolve them. He has not produced evidence of communications with the creditors. He has not received financial counseling, nor has he provided evidence of payments, payment plans, or any other efforts made to resolve these debts. He also failed to establish that he initiated and is adhering to a good-faith effort to repay these debts. Applicant actions regarding these debts have not been reasonable or responsible.

Although the record indicates Applicant previously disputed two debts with the creditors, he did not present this as an argument in his Answer. Nor did he offer evidence to support a reasonable basis to dispute any of his delinquent debts. He said that he would submit documentary evidence of his agreement with the state taxing authority after the hearing, but he failed to do so. No mitigating conditions apply to the unresolved debts in SOR ¶¶ 1.g through 1.j.

There is insufficient evidence to determine that Applicant's financial problems are behind him. I am unable to find that he acted responsibly under the circumstances with regards to his most significant debts, or that he made a good-faith effort to pay them. His financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. I find that financial considerations security concerns remain unresolved in this case despite the presence of some mitigation.

### **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 Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns in this case.

### **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:                   **For Applicant**

Subparagraphs 1.g - 1.j:                   **Against Applicant**

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Gatha LaFaye  
Administrative Judge