



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



In the matter of:

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ISCR Case No. 24-01008

Applicant for Security Clearance

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel

For Applicant: *Pro se*

02/19/2025

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 April 10, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On August 6, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2)

Applicant provided an undated response to the SOR. On October 21, 2024, Department Counsel was ready to proceed. On November 6, 2024, the case was assigned to me. On November 8, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing on December 16, 2024. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant did not offer any documents into evidence. (Tr. 11, 18-21; GE 1-GE 4) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 20-21) On December 27, 2024, DOHA received a copy of the transcript. The record was not held open after the hearing. (Tr. 77)

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 that he opened the accounts in SOR ¶¶ 1.b and 1.c, and he said his spouse opened the other SOR accounts under his name. He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 42-year-old field technician, who has worked for a government contractor for nine years. (Tr. 6, 8) In 2001, he graduated from high school, and he has not attended college. (Tr. 6-7) In 2003, he married, and in 2018, he divorced. (Tr. 8, 22) His two children are ages 16 and 21. (Tr. 8) He is cohabiting with his fiancée who has two children who are ages 14 and 15. (Tr. 23) His monthly child-support obligation is \$600. (Tr. 24) In May 2024, Applicant and his fiancée had a child. (Tr. 25) His fiancée is a bartender. (Tr. 26) She is paid \$10 an hour plus tips. (Tr. 26)

Applicant served in the Air Force for 13 years. (Tr. 9) His Air Force specialty was structural journeyman. (Tr. 8) He was honorably discharged from the Air Force as a staff sergeant (E-5). (Tr. 9)

Financial Considerations

Applicant completed a personal financial statement (PFS) in which he indicated gross monthly salary of \$2,970; net monthly salary of \$1,915; total net monthly income of \$3,829; total monthly expenses of \$2,946; monthly debt payment of \$177; and net monthly remainder of \$706. (GE 2 at 10) He did not explain why his net monthly income was more than his gross monthly salary.

At his hearing, Applicant said his annual salary is \$63,447, which is substantially more than his gross monthly salary on his PFS of about \$36,000. (Tr. 27) He said his monthly rent is \$2,000; however, his PFS indicates rent of \$700. (Tr. 25) His fiancée currently pays half of the rent and some of the other bills. (Tr. 27) During Appellant's marriage, his spouse handled the family finances. (Tr. 34) In his June 2023 Office of

Personnel Management (OPM) personal subject interview (PSI), Applicant said he was unaware of some of his delinquent debts until his OPM PSI. (Tr. 35)

Appellant's August 6, 2024 SOR alleges and his June 6, 2023, and April 1, 2024 credit bureau reports (CBR) state he has eight delinquent debts totaling \$56,602. The status of the SOR debts is as follows:

SOR ¶ 1.a alleges a charged-off debt for \$34,674. In 2014, Applicant and his spouse borrowed the funds to purchase a vehicle. (Tr. 39, 56) He said his spouse received the vehicle and accepted responsibility for the debt during their divorce discussions; however, this allocation of responsibility was not included in their divorce decree. (Tr. 39-40, 57) The last payment was made in 2019. (Tr. 56) Applicant has not contacted the creditor or made any efforts to pay the debt. (Tr. 40-41) His former spouse advised him that she did not care about the debt. (Tr. 41) His June 6, 2023 CBR states, "Charged off as bad debt Profit and loss write-off." (GE 2 at 42; GE 3 at 2) His April 1, 2024 CBR includes this debt as a "PROFIT AND LOSS WRITEOFF." (GE 4) He said the debt has been dropped from his credit report. (Tr. 41) He did not provide any credit reports. His former spouse has possession of the vehicle. (Tr. 41, 57) After he received the SOR, he decided not to contact the creditor to find out about the debt because he believed it was written off. (Tr. 58)

SOR ¶¶ 1.b and 1.c allege two accounts placed for collection for \$687 and \$614. Applicant obtained the two credit cards after his divorce. (Tr. 47) He has been making monthly payments of \$29 to the creditor since January 2024. (Tr. 41-43; GE 2 at 21-23) These two debts are mitigated because he has them in an established voluntary payment plan.

SOR ¶ 1.d alleges a charged-off debt for \$16,062. Applicant's pay is being garnished \$90 twice a month. (Tr. 44) He intends to continue the garnishment until the debt is paid. (Tr. 45) He was unaware the debt was delinquent during his marriage until he received the garnishment order in September of 2021. (Tr. 36, 46) At the time of the garnishment, the balance owed was \$19,355. (GE 2 at 16) The debt is not listed on his April 1, 2024 CBR. (GE 4)

SOR ¶¶ 1.e alleges an account placed for collection for \$1,990; 1.f alleges a charged-off debt for \$1,272; 1.g alleges a charged-off debt for \$720; and 1.h alleges an account placed for collection for \$551. Applicant said his spouse probably opened the accounts with his consent. (Tr. 49-53) He was unaware of the accounts being delinquent until he completed his 2023 SCA and 2023 OPM PSI. (Tr. 50-53) He asked his spouse to pay the debts; however, he did not hear anything about her doing anything about the debts. (Tr. 50-53) He indicated the debts may have been charged off or dropped from his credit reports. (Tr. 50-51) They are not listed on his April 1, 2024 CBR. (GE 4)

Applicant has about \$100 available at the end of the month to address delinquent debts. (Tr. 53) He does not have a savings account, and his checking account has a balance of about \$100. (Tr. 54) He pays \$40 or \$50 a month into his retirement account,

and he estimated the balance is about \$10,000. (Tr. 53-54) He has not received any credit counseling. (Tr. 54)

Character Evidence

Applicant's supervisor and friend, who has known Applicant for 10 years, and a coworker and friend, who has known Applicant for 20 years, described him as diligent, professional, reliable, honest, trustworthy, and responsible. (Tr. 62-73) Their statements support approval of his access to classified information.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable, and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from

being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

"[A] single debt can be sufficient to raise Guideline F security concerns." ISCR Case No. 19-02667 at 3 (App. Bd. Nov. 3, 2021) (citing ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016)). "Additionally, a single debt that remains unpaid over a period of years can properly be characterized as a history of not meeting financial obligations." *Id.*

The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Additional inquiry about the possible applicability of mitigating conditions is required. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20, which may be applicable in this case are as follows:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance

of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

AG ¶ 20(a) does not apply to the SOR debts. “It is also well established that an applicant’s ongoing, unpaid debts demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)).

Applicant was divorced in 2018. Divorce is a circumstance largely beyond his control, which 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) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). Applicant did not establish that he acted responsibly under the circumstances because he has not made significant progress addressing his delinquent SOR debts, and the connections to and financial costs of his divorce to his current delinquent debts are unclear.

As indicated previously, SOR ¶¶ 1.b and 1.c for \$687 and \$614 are mitigated because he has them in an established payment plan.

Applicant was married from 2003 until 2018. He said his spouse was managing their accounts, and she opened some accounts without his specific permission to do so or he gave her verbal permission to open the accounts without ensuring the debts were paid. In a case where an applicant blamed his spouse for mishandling their finances, the Appeal Board said:

The degree of ignorance claimed by Applicant suggests an indifference to the proper satisfaction of legal obligations that draws into question his willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. Reliance upon a spouse or upon some other person to fulfill one’s legal obligations places responsibility on an applicant to remain aware of the extent to which the spouse or other person is acting reliably on his or her behalf.

ISCR Case No. 18-02914 at 4 (App. Bd. Jan. 8, 2020).

SOR ¶ 1.d alleges a charged-off debt for \$16,062. Applicant's pay is being garnished \$90 twice a month to address this debt. He said he was unaware the debt was delinquent during his marriage until he received the garnishment order in September of 2021. The Appeal Board has addressed the mitigative effect of paying a debt through garnishment as follows:

Court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor himself. See, e.g., ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016). Indeed, reliance upon garnishment, refund interception, or bankruptcy do not equate to good-faith efforts by Applicant to resolve his financial problems The Directive does not define the term "good faith." However, we have stated that the concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence honesty, and adherence to duty or obligation." See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). Accordingly, an applicant must do more than show that he or she relied on a legally available options such as garnishment and bankruptcy in order to receive the full benefit of Mitigating Condition 20(d).

ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019) (reversing grant of security clearance).

Applicant indicated several of his 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.

"[U]ntil an applicant has a meaningful financial track record, it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolved debts. The phrase 'meaningful track record' necessarily includes evidence of actual debt reduction through payment on debts." ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007)).

Financial considerations security concerns are not fully mitigated. Applicant's SOR alleges he has eight delinquent debts totaling \$56,602. He mitigated two SOR debts because he has them in a voluntary payment plan. He did not maintain contact with several of his creditors. He does not have a payment plan to address most of his delinquent debts, and he has not made any payments to five of the eight SOR creditors. I am not confident that he will establish payment plans, pay, or otherwise resolve these five debts, and maintain his financial responsibility.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 42-year-old field technician, who has worked for a government contractor for nine years. In 2003, he married, and in 2018, he divorced. He served in the Air Force for 13 years. He was honorably discharged from the Air Force as a staff sergeant. A supervisor and friend, who has known Applicant for 10 years, and a coworker and friend, who has known Applicant for 20 years, described him as diligent, professional, reliable, honest, trustworthy, and responsible. Their statements support approval of his access to classified information.

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**

Subparagraph 1.a: Against Applicant
Subparagraphs 1.b and 1.c: For Applicant
Subparagraphs 1.d through 1.h: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States 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