



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



In the matter of:)
)
) ISCR Case No. 23-01457
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns 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 1, 2022. On August 21, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on September 21, 2023 (Answer), and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals

(DOHA). The hearing convened as scheduled on October 17, 2024. Department Counsel offered into evidence Government Exhibits (GX) 1-5. Applicant testified and offered into evidence Applicant Exhibits (AX) A-F. All exhibits were admitted without objection. The record was left open through November 1, 2024, for either party to submit additional information. Applicant timely submitted AX G-M that were admitted without objection and the record closed. DOHA received the hearing transcript (Tr.) on October 24, 2024.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a through 1.e. He denied SOR allegation ¶ 1.f, and provided supporting documents and explanations. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 60 years old. He was married from 2004 through 2014 and has three adult-aged children from that relationship. He married his second wife in 2021 and she currently resides in Trinidad and Tobago, her country of origin. At the time of the hearing, Applicant was sponsoring her for residency in the United States. He served in the Army from 1982 through 2006, participated in tours in Iraq and Afghanistan and retired as a sergeant first class (E-7). He has remained consistently employed since his retirement from the Army and has been with his sponsoring employer as a locksmith since July 2022. (GX 1, 2; Tr. 20-26)

Applicant's financial difficulties began in 2018 when he decided, with a partner, to start a real estate business where he would buy, fix and sell properties. He had no previous experience in real estate transactions, but believed this presented a strong business opportunity. He initially spent \$50,000 of his own funds on a real estate course to learn how to flip residential properties. Shortly afterwards, he spent another \$25,000 of his own funds on a real estate course to learn how to flip commercial properties. He then paid about \$10,000 to \$15,000 for a law office to create his business entity and file required incorporating documents with government authorities. He also spent funds traveling to various real estate courses and conferences in 2018 and 2019. (Answer; GX 1-3; Tr. 32-40, 99-102)

Although he had a partner, Applicant was the sole provider of funds for the business. He withdrew about \$50,000 in equity from his home and used personal funds in order to take the courses and start the business. Unable to secure a business loan or business credit, he used his personal credit cards to cover additional expenditures. He also remained employed in a full-time position during this period. (Answer; GX 1-3; Tr. 35-42, 99-102)

While trying to get the business up and running in 2018 and 2019, Applicant lost two profitable deals for transactional reasons. He was already experiencing financial difficulties when the COVID-19 pandemic brought the entire real estate industry to a

standstill in 2020. By then, he had stopped paying on most of his credit cards. (Answer; GX 1-4; Tr. 38-45)

In about November 2019, Appellant hired a law group to address his debts. He agreed to pay them \$17,500 and began sending them \$610 a month toward that agreement. He claimed that the law group was supposed to create an escrow account and attempt to resolve his debts. However, he soon discovered that the law group focused on contesting debts and that none of his monthly payments went toward an escrow for debt reduction or settlement. He provided a record of payments to the law group, but did not provide a copy of the agreement. (GX 1-3; AX H; Tr. 41-53, 103-112)

While his hiring of the law group assisted in stopping the collection calls, Applicant believed the law group did “basically nothing” during the first two to three years of their arrangement. (Tr. 47) However, he also claimed that they gave him advice on how to resolve debts. He no longer pays the law group, but they continue to represent him in relation to debts that Applicant had at the time he hired them. (GX 1-3; AX A, K; Tr. 41-53)

In a March 2023 correspondence, an attorney for the law group stated they were hired to represent Applicant “regarding receivables” from specific creditors. (GX 3) These creditors were associated with delinquent accounts listed as ¶¶ 1.a-1.e in the SOR as well as accounts with two additional creditors (Creditor 1 and Creditor 2) that were not listed in the SOR. The attorney further detailed that, as part of their representation, the law group was investigating whether any of the creditors violated Applicant’s rights under the Consumer Credit Protection Act. (GX 3)

In May 2022, Creditor 1 entered a consent judgment against Applicant for \$7,569 plus interest and court costs. Shortly afterwards, a payment plan was initiated where Applicant would pay the creditor \$210 per month. He has continued to make timely payments and, as of October 2024, the debt had been reduced to \$1,840. He stated his intent to continue making payments to resolve this account. (Answer; GX 1; AX L-M; Tr. 53-61)

In early 2023, through the law group, Applicant sued a collection agency representing Creditor 2 for credit reporting violations. In July 2023, the case settled and Creditor 2 cancelled an unspecified amount of Applicant’s debt and paid him \$2,500. Applicant stated that the law group took all of the funds from the settlement. (AX D; Tr. 65-68)

In September 2024 and October 2024 correspondence, the same attorney for the law group stated they were hired by Applicant to enforce his rights under Federal law regarding alleged consumer debt violations. The attorney claimed that the law group worked on several accounts, but provided no detail as to what actions were taken on behalf of Applicant. Instead, the attorney detailed that Applicant’s remaining delinquent

accounts were all approaching the statute of limitations and that they believed the creditors would not pursue the debts. (AX A, K)

At hearing, Applicant stated it was a mistake to hire the law group but, having paid them so much, he felt compelled to take their advice. He claimed he communicated with the law group about the SOR, but did not change how he and the law group managed his delinquent debts. He further expressed a willingness to pay his debts, but only if the creditors contacted him or the law group. (Tr. 93-97, 100-109)

The evidence regarding the SOR allegations is summarized below:

SOR ¶¶ 1.a (\$13,564) and 1.b (\$10,812) are credit card accounts that were used as Applicant started his business and have been charged off. **SOR ¶ 1.d (\$8,204)** is another credit card account that has been referred to a collection agency. These debts show as unresolved in Applicant's credit reports. He admitted that he received correspondence from these creditors over time, but referred any inquiries to the law group. He believed these debts had all reached the statute of limitations. He intended to continue to take the law group's advice and not reach out to creditors unless he was first contacted. These debts are unresolved. (GX 3-5; Tr. 45-53, 94-95)

SOR ¶ 1.c (\$9,844) is another credit card account that Applicant used to finance his real estate business. Although Applicant stated that the law group was working to resolve this debt, no action was taken until 2024 when the creditor pursued the debt through litigation. A settlement was reached in March 2024 and a consent judgment was entered for \$7,200 with Applicant scheduled to make payments of \$300 per month. He testified that he set up an auto-withdrawal on the account and was continuing to make payments. (GX 3-5; AX C, I; Tr. 53-61)

SOR ¶ 1.e (\$7,124) is a credit card account that has been charged off. Applicant stated that the creditor had pursued litigation against him, but could not provide any details. With the assistance of the law group, he last had contact with the creditor in 2023 and offered \$5,000 to settle the debt, but claimed they never heard back from the creditor. The September 2024 and October 2024 correspondence from the law group gave no indication that this debt was being negotiated or settled. Instead, it was listed with several other debts as pending the statute of limitations and unlikely to be pursued by the creditor. The debt remains unresolved. (GX 3-5; Tr. 63-65, 96-98)

SOR ¶ 1.f (\$1,713) alleged that Applicant owed delinquent federal taxes for tax year (TY) 2021. In his March 2023 response to interrogatories, Applicant disclosed that he filed his TY 2021 tax return in March 2023 and was waiting on IRS processing before submitting a payment. However, he denied the SOR allegation in his Answer and stated he paid the delinquent taxes. A tax transcript confirmed that Applicant's TY 2021 return was received in March 2023. He received penalties for the late filing and late payment. However, he submitted a payment in September 2023 and no longer owes any taxes for TY 2021. (GX 3; AX F-G; Tr. 68-71)

Additional tax transcripts reflect that Applicant filed his TY 2022 return in September 2024 and received penalties for the late filing and late payment. He issued a payment in October 2024 and no longer owes any taxes for TY 2022. He filed his TY 2023 return in May 2024 and received penalties for the late filing and late payment. He issued a payment in August 2024 and no longer owes taxes for TY 2023. (AX B, E, J; Tr. 78-80)

Applicant explained that he started filing his tax returns late while waiting each year for his wife's immigration processing to clear as he had hoped to claim her as a dependent. He also withdrew funds from his retirement in 2022, which complicated his filing and increased his tax bill. He uses online software to prepare his return and does not use an accountant. However, he also testified that, even when he owed taxes, he did not submit payment at the time of the filing. Instead, he waited until the IRS calculated penalties and interest. He would then submit a payment once he knew the final bill. (Tr. 72-90)

During the hearing, Applicant detailed that he had sufficient income to maintain his finances and had previously used funds for other expenditures besides his delinquent debt. In 2022, he purchased a vehicle for about \$41,000 and is timely making monthly payments of \$791 on the loan. In 2022, he also withdrew about \$65,000 from his retirement fund for the down payment on a home valued at \$205,000 in Trinidad and Tobago. He then withdrew additional funds from his retirement in 2023, and had about \$16,000 remaining. He estimated he was earning an annual income of about \$77,000, but had recently received a raise. He also earned about \$36,000 annually in military retirement and additional funds based on a (15%) military disability rating. (GX 2-5; Tr. 28-30, 75-85)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988)

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 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, these guidelines are applied 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(a), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses

concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

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

- (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's admissions and the evidence reflect that he incurred multiple delinquent accounts over the last several years. He was also late in paying federal taxes owed for TY 2021. The above disqualifying conditions are established.

Once delinquent debt is established, an applicant has the burden of presenting evidence to refute, explain, extenuate, or mitigate the security concerns arising from those debts. ISCR 20-03146 at 3 (App. Bd. June 6, 2022).

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;

(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

(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's financial struggles began when he decided to spend \$75,000 on real estate courses in 2018 and at least an additional \$15,000 in legal fees for incorporation and travel expenditures. He used personal funds for this venture because he could not secure any business credit. These were predictable expenditures largely within his control. While his subsequent struggles to secure a real estate deal may have been unforeseen and the COVID-19 pandemic delayed any real estate recovery, the initial threshold for consideration of mitigation under AG ¶ 20(b) is only partially applicable.

Applicant's actions to address his delinquent debts largely center on his decision in 2019 to pay a law group \$17,500 to represent him in some capacity regarding those debts. He never provided a contract detailing the actual services provided by the law group and he has not established that he received any financial counseling from them. Mitigation under AG ¶ 20(c) is not applicable.

Instead, in multiple correspondence, an attorney for the law group stated they were hired to enforce Applicant's rights under Federal law regarding alleged consumer debt violations. Yet, in his Answer and at hearing, Applicant admitted and took responsibility for all of the consumer debts alleged in the SOR. Specifically with regard to SOR allegations ¶¶ 1.a, 1.b and 1.d, the record lacks evidence that Applicant or the law group is actively contesting the debts, negotiating a resolution or establishing a payment plan. Even after his admission that it was a mistake hiring the law group, he chose to take no action on the debts until the statute of limitations makes the debts legally unenforceable. The debts are ongoing. Neither mitigation under AG ¶¶ 20(a) nor 20(e) is applicable.

With regard to SOR allegation ¶ 1.e, Applicant claimed that he and the law group attempted to settle the account a year ago, but never heard back from the creditor. However, he also believed the debt was pending litigation but could not provide any details. Waiting for a creditor to pursue court action on an admitted debt fails to establish a good-faith effort to repay overdue creditors or otherwise resolve debts.

The only consumer debt listed within the SOR allegations that Applicant is actively resolving is ¶ 1.c. However, a settlement on the debt occurred in 2024 after the creditor pursued court action and a consent judgment was entered. Similarly, he is also paying Creditor 1, but only after a consent judgment was reached in 2022. While Applicant is credited with resolving these accounts through payments, his efforts on these two

accounts do not establish mitigation under AG ¶ 20(d) regarding the overall security concerns.

Additionally, although financially able, Applicant waited until September 2023 to pay his TY 2021 taxes. Moreover, he filed his TY2021, TY2022 and TY2023 returns late and he paid his TY2022 and TY2023 taxes late. These additional tax issues were not alleged in the SOR. However, they establish a history of non-compliance with tax obligations that undercut assertions of mitigation, since his tax problems are recent. While he is aware of his tax circumstances and appears committed to correcting the situation, particularly to benefit his wife's immigration status, he has not yet established a track record of compliance with his tax obligations. Mitigation under AG ¶ 20(g) is applicable to SOR ¶ 1.f, but does not mitigate the overall security concerns.

While Applicant is credited with resolving some of his delinquent accounts, he has allowed others to linger for years without resolution. None of the mitigating conditions are fully applicable to the security concerns established for financial considerations.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant's financial circumstances have greatly improved since his poor business decisions in 2018 and 2019. However, even with the assistance of the law group, he has not yet established a track record of debt resolution to mitigate the ongoing financial

security concerns. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge