



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 17-02909  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

04/09/2019

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**Decision**

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MASON, Paul J., Administrative Judge:

Eligibility for security clearance access is denied.

**Statement of the Case**

On December 24, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to apply for a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings necessary to grant a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated September 7, 2017, detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The guidelines are applicable to all individuals who require initial or continued eligibility for access to

classified information or eligibility to hold a sensitive position. The AGs were made effective on or after June 8, 2017.

Applicant provided her notarized answer on November 27, 2017, and requested a hearing. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2018, for a hearing on September 21, 2018. The hearing was held as scheduled. The Government's seven exhibits (GE) 1-7 and Applicant's 10 exhibits (AE) A-J were admitted without objection. Applicant's post-hearing exhibits (AE K-AE M) were entered into evidence on October 25, 2018, without objection. DOHA received the transcript on October 3, 2018. The record closed on October 25, 2018.

### **Findings of Fact**

The SOR alleges a Chapter bankruptcy discharge in 2001, and a Chapter 13 discharge in February 2010. The SOR also alleges 21 delinquent debts totaling approximately \$67,472, of which \$58,700 is student loan debt. Applicant admitted the bankruptcies under the financial considerations guideline. She admitted SOR 1.c through 1.i; she denied the medical accounts at SOR 1.j through 1.n; and she admitted SOR 1.o through 1.w, with explanations. The delinquent debts include a rental judgment, a car insurance judgment, two department of education loans, two cable debts, two phone debts, five medical debts, a utility debt, four parking tickets, and a pest control debt.

Applicant is 44 years old and divorced. She has two adult-aged daughters, 25 and 24 years old. After high school, she received several computer certifications. She has worked for defense contractors from 2008 to 2018. Since March 2018, she has been employed by a contractor in the Freedom of Information Act (FOIA) office of a Federal agency. In her job, she processes document requests for time sensitive delivery to the requestor. Applicant has had three periods of unemployment: February to July 2011; October to December 2011; and August to November 2012. Applicant believed her Chapter 7 bankruptcy in 2001 was caused by periods of unemployment resulting in bills before 2001. She also recalled that she had a car repossessed before the bankruptcy. The Chapter 13 bankruptcy that she successfully discharged in February 2010, was caused by working on contracts that expired and looking for new employment. (G1 at 12-18; Tr. 9-10, 45-46)

SOR 1.c – The Government documentation shows that the judgment was filed in April 2011, after Applicant's February 2010 Chapter 13 bankruptcy discharge. In her November 2017 answer to the SOR, Applicant claimed that she disputed the judgment. During her testimony, she indicated she spoke with the landlord and paid the debt in 2010. Upon further questioning about the reason for the debt, she indicated that she had medical surgery and had to take short-term disability and did not get paid. She intended to check her paperwork to determine when she paid the judgment. (GE 4 at 5; Tr. 34, 48) The debt is unresolved.

SOR 1.d – Government documentation indicates that a judgment was filed against Applicant in 2015. In her answer, Applicant claimed that she paid the judgment and submitted AE B and AE G to establish that the judgment was paid. Even though the insurer’s name does not appear in either exhibit. In October 2017, the author of AE B instructed her to pay the \$628 balance and the judgment and suspension and judgment would be removed. In February 2018, the state motor vehicle agency advised her that judgment and suspension was removed based on the agencies receipt of an order of satisfaction. (AE B, AE G; Tr. 51-53) The allegation is resolved for Applicant.

SOR 1.e, 1.f – the two allegations represent student loans for Applicant’s two daughters. Government documentation shows that the loans became delinquent in April 2015 and were no longer in forbearance as on June and July 2018. Applicant cosigned for both loans, but did not realize that she was liable as cosigner if her daughters defaulted on the loans. Applicant’s post-hearing documentation reflects that the loans have been restored to forbearance, are in grace, or in repayment. (GE 2; AE C, AE D, AE K, AE L; Tr. 34-36, 53-6)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are not inflexible rules of law, should be applied with common sense and the general factors of 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(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

### **Analysis**

#### **Financial Considerations**

The security concerns of the guideline for financial considerations are set forth 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶19 describes conditions that may be disqualifying:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶20 describes conditions that could mitigate security concerns include:

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

The SOR lists eight delinquent student loan debts and five medical debts. The total amount of debt is \$51,311. The Government credit reports substantiate that the debts became delinquent between July 2010 and December 2016. The large amount of debt accumulated over a six-year period supports the application of AG ¶¶ 19(a) and 19(c).

While AE A shows that Applicant has paid a portion of his delinquent debt between 2013 and 2018, a substantial but unknown portion of his student loan debt remains unpaid. Applicant stated in his May 2017 PSI that he intended to contact the creditors and pay the debts. At the hearing, however, he stated that his work-related travel schedule was hindering his ability to address the delinquent debts. During the hearing, he restated his intention to contact the creditors and negotiate payment plans or resume payments. Applicant's failure to show in his post-hearing submission (AE A) that he has a defined plan to repay any of his creditors continues to cast doubt on his judgment. AE ¶ 20(a) does not apply.

The record indicates that Applicant's debts started to become delinquent in July 2010, when he was working at one of his low-paying jobs. In 2013, Applicant began providing money and food to his father who had lost his job, resulting in Applicant falling behind in his financial obligations. In 2015, his father resumed working. The low paying jobs and his father's two-year period of unemployment warrant some mitigation under the first prong of AG ¶ 20(b).

However, to receive full credit under AG ¶ 20(b), an applicant must produce evidence that shows he acted responsibly under the circumstances. Applicant has been working for his current employer since February 2015. When his father returned to work in 2015, Applicant no longer had to support him. Assuming that the payment amounts posted and corresponding dates in AE A were in fact payments, Applicant made only four payments to the servicer in 2015, only six payments in 2016, only four payments in 2017, and only one payment in January 2018, although it is highly unlikely the payment was \$32,176 as is posted in AE A. Applicant does not receive full mitigation under AG ¶ 20(b) because his evidence fails to show consistent payment documentation on his student loans since 2013.

Applicant has never had financial counseling. Though AE A reflects that he has been in contact with the student loan servicer identified at SOR 1.a, there is no evidence to support a conclusion that his delinquent student loans and medical accounts are under control. With scant documentation of payments or payment plans, I am unable to conclude that Applicant has made a good-faith effort to repay his debts. Applicant's delinquent debts are not mitigated or excused by his work-related travel schedule or his uncorroborated claims of having the student loan debts consolidated. AG¶¶ 20(c) and 20(d) do not apply.

## **Personal Conduct**

AG ¶ 15 expresses the security concerns related to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

Under AG ¶ 16, the applicable disqualifying conditions are:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under AG ¶ 17, conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Concerning SOR 2.a and 2.b, Applicant denied in his October 2016 e-QIP that he had federal debt and that any of his debts had been turned over to a collection agency in the past seven (7) years. Those two negative answers were false. Applicant informed the OPM investigator in May 2017 that his omissions were inadvertent. In his February 2018 answer to SOR 2.a and 2.b, he admitted both allegations. During the hearing, he explained that he provided a negative answer to SOR 2.a because he thought that SOR 1.a and 1.g through 1.i student loan accounts were consolidated and current. He provided no evidence to support that claim. He defended his negative response to SOR 2.b by claiming that his review of a December 2015 credit report showed no collection accounts. That claim is not credible as the Government credit reports show that 11 of the 13 accounts listed in the SOR had become delinquent by December 2015. Considering Applicant's inconsistent explanations for his negative responses, and the absence of supporting documentation for either response, I conclude that Applicant deliberately falsified his October 2016 e-QIP. AG ¶ 16(a) applies.

Applicant did not make prompt, good-faith efforts to the falsification before being confronted with the information that the OPM investigator presented to him in May 2017. At the September 2018 hearing, Applicant advanced two claims for the October 2016 omissions that are not credible. AG ¶ 17(a) does not apply. Even though almost three years have passed since the falsifications, Applicant has provided insufficient evidence to establish that his conduct is unlikely to recur. AG ¶ 17(c) does not apply. AG ¶17(d) does not apply because Applicant has not acknowledged that he falsified the Government security application.

### **Whole-Person Concept**

I have examined the evidence under the guidelines for financial considerations and personal conduct in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 31 years old and single. In September 2008, he earned an associate's degree in business and collision refinishing. After working several low-paying jobs between 2006 and 2014, Applicant began working as a service technician for his current employer in February 2015. From 2013 to 2015, Applicant discovered he was having problems paying his bills because he was providing monetary assistance and food to his unemployed father. His father resumed working in 2015.

In his October 2016 e-QIP, Applicant deliberately falsified the e-QIP by denying he had federal delinquent debt and that he had debts turned over to collection agencies in the last seven years. He stated in his May 2017 PSI that the omissions were inadvertent and he intended to contact the creditors and repay the debts. He provided some evidence of occasional payments to a student loan servicer. But, he provided no evidence of payments on the student loans since January 2018.

The DOHA Appeal Board has noted under the financial considerations guideline that an applicant should demonstrate a "meaningful track record" of payments that shows overall debt reduction. Though Applicant is not required to demonstrate he has

paid off all debts listed in the SOR, he should show that he has a plan to repay the delinquent debts and has taken consistent steps to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)

While AE A shows sporadic payments on Applicant's student loans between 2013 and January 2018, the exhibit provides no information showing to which listed student loan debts the payments apply. The exhibit does not show whether any of the student loan debts have been returned to a current status or placed in forbearance or rehabilitation. The record contains no evidence that Applicant has taken any action to pay off the medical accounts, even though he has discretionary income of \$400 to \$500 every month. Judging by the totality of the evidence, Applicant has not overcome the security concerns based on the guidelines for financial considerations and personal conduct.

### **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.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge