



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 17-04063  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

04/02/2019

**Decision**

MASON, Paul J., Administrative Judge:

Applicant’s documentation is insufficient to show that he has returned his delinquent student loans to a current status. He provided no evidence of steps taken to resolve the delinquent medical accounts. Overall, the guidelines for financial consideration and personal conduct are unmitigated. Eligibility for security clearance access is denied.

**Statement of the Case**

On October 17, 2016, 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 December 21, 2017, detailing security concerns raised by financial considerations (Guideline F) and personal conduct (Guideline E). 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 his notarized answer on February 21, 2018, and requested a hearing. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 11, 2018, for a hearing on September 27, 2018. The hearing was held as scheduled. The Government's four exhibits (GE) 1-43 were admitted without objection. Applicant's post-hearing submission (AE) A was entered into evidence on October 16, 2018, without objection. Based on Department Counsel's questions (transmitted in an email forwarding AE A to me) related to the origin of two large payments and what the large payments represent, I emailed Applicant and Department Counsel on October 17, 2018, indicating that Applicant would be granted additional time until November 2, 2018, to supply explanations and/or supporting documentation. DOHA received no additional documentation from Applicant. DOHA received the transcript on October 5, 2018. The record closed on November 2, 2018.

### **Findings of Fact**

The first paragraph of the SOR alleges thirteen delinquent debts under the financial considerations guideline. Those debts, which total \$51,311, include eight student loan accounts and five medical accounts. The second paragraph lists two allegations under the personal conduct guideline. Applicant admitted all allegations. (Answer to SOR)

Applicant is 31 years old and single. He has been employed as a service technician for a defense contractor since February 2015. His job requires him to travel to job sites around the world, and erect and start compressors or provide general maintenance to existing units. His employment between 2006 and 2014 was in low-paying jobs as a car salesman, a detailer, jobs in fast food restaurants, and a hotel bellman. In September 2008, he earned an associate's degree in business and collision refinishing. Applicant has never held a security clearance. (GE 1 at 5-22, 36-37; Tr. 10)

Applicant explained in his May 2017 Office of Personnel Management (OPM) interview (PSI) that the reasons for his financial problems were a lack of funds caused by low paying jobs, and taking care of his father. As a result, he had trouble paying his financial obligations. He believed the student loans at SOR 1.g, 1.h, 1.i, 1.j, 1.k, and 1.l were consolidated.<sup>1</sup> He surmised that the student loan at SOR 1.m, that had become delinquent in November 2010, had been consolidated and he was trying to settle the debt. Applicant believed that the medical accounts at SOR 1.b through 1.f had been

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<sup>1</sup> These accounts became delinquent in July 2010. (AE 2 at 6)

settled. He informed the OPM investigator that he would contact the creditors and pay the accounts. (AE 2 at 15)

During the hearing, Applicant testified that all the student loan accounts listed in the SOR were opened to finance Applicant's associate's degree which he received in September 2008. He conceded that the SOR 1.a student loan account was still in default and that he has to make arrangements to begin paying the account. He had no documents showing correspondence with the student loan servicer. His only contact occurred by telephone. Regarding the student loan accounts at SOR 1.g through 1.l, he indicated that the servicer for the accounts informed him that he was actually responsible for 12 loan accounts. Applicant admitted that the student loan account at SOR 1.m was in default and he intended to contact the servicer to bring the account current. The only documentary evidence that Applicant furnished is AE A, but it is impossible to determine from the exhibit what action Applicant took to return any of the student loan accounts to a current status. (GE 2 at 5-6, 15; AE A; Tr. 23, 25-26)

According to Applicant, the five medical accounts at SOR 1.b, 1.c, 1.d, 1.e, and 1.f, resulted from a single trip to a hospital emergency room. He was prescribed medication to alleviate the pain from a toothache until he could see a dentist. Applicant could provide no explanation for why he received five bills for one emergency room visit. He was not certain whether he had medical insurance to cover the emergency room treatment. The Government credit bureau reports reflect that the medical bills were incurred on five different occasions between May 2011 and July 2016. (GE 2 at 15-17; GE 4 at 2; Tr. 24-25)

Applicant testified at the hearing that he did not contact and negotiate settlements with the listed creditors as he stated to the OPM investigator in May 2017 because of his work-related travel. He is out of the office three to four days a week. Though his employer's policy is to have employees in the office 50 percent of the time and on travel 50 percent of the time, sometimes he is out of the office up 80 percent of the time. (Tr. 26-27)

Between 2013 and 2015, Applicant was taking care of his father who was unemployed. Applicant provided money and food to his father during this period. This was one of the reasons his debts became delinquent. His father resumed working in 2015. (GE 3 6-7; Tr. 28)

Another reason for Applicant's delinquent debts was his low-paying employment before he began working at his present employer in February 2015. His monthly take home pay from his much better paying current job is between \$2,100 and \$2,200 a month. After he pays his monthly expenses, he has about \$400 to \$500 a month of discretionary income left over. He has approximately \$1,000 in his savings account. He has never had financial counseling. (Tr. 29-30)

In his May 2017 PSI, Applicant indicated that his omission of information from his e-QIP (SOR 2.a, 2.b) was inadvertent. In his answer to the SOR, he admitted falsifying the Section 26A question when he answered “no” to being delinquent on any federal debt, deliberately failing to disclose federal student loans at SOR 1.a and 1.g through 1.i (SOR 2.a). In his answer to the SOR, he admitted deliberately falsifying Section 26A question when he answered “no” to having bills turned over to a collection agency in the past seven (7) years (SOR 2.b). (GE 3 at 6; answer to SOR)

During the hearing, Applicant explained the reason for his “no” answer to SOR 2.a was not inadvertence as he stated in his May 2017 PSI. Rather, he testified, “from what I [was] paying during that time (October 2016), I thought that everything was consolidated, but it was not. So, I answered no because I believed I [was] current at that current time.” Applicant had no documents to verify he was making payments in October 2016 or that his student loans were current. Applicant’s testimonial explanation for his “no” answer to SOR 2.b was based on a credit report he claimed he viewed in December 2015 showing that he had no collection accounts. (Answer to SOR; Tr. 30-31)

Applicant’s post-hearing exhibit, AE A, two pages in length, is entitled “payment history” generated by the student loan servicer identified in SOR 1.a. The exhibit contains six columns: the first column identifies the date payments were made; the second column of figures is labeled payment amount; the third column identifies the portion of the payment amount that was applied to the principal debt; the fourth column identifies the portion of the payment amount that was applied to interest; the fifth column identifies the payment amount that applied to fees (a notation on the second page indicates the United States Government does not assess late or returned payment fees); and the sixth column identifies the payment type. The sixth column (payment type) indicates that from January 2013 to June 2013, Applicant apparently paid the student loan servicer by check on seven occasions. The payment type for the remaining payments is labeled “other.” Applicant supplied no explanation for how to define the “other” payment type.

AE A shows that all payments are below \$175 except for a payment of \$12,689 in September 2015, and a payment a \$32,176, the only payment for 2018. Where do these large payments come from and are they payments or loan consolidations? Which student loan account or accounts in AE A are listed in the SOR? AE A does not provide answers to these two questions. AE A does not indicate whether any of the student loan accounts have been placed in forbearance or rehabilitation. Applicant testified that his “no” answer to SOR 2.a was based on what he was paying at the time of the October 2016 e-QIP. A review of the payment dates in 2016 show that he made five \$160 payments from February through June 2016, but no payments to the servicer from July 2016 through October 2016. In November 2016, he made a payment of \$160, but no payment in December 2016. He made only four monthly payments in 2017, two \$160 monthly payments and one \$320 payment (where he doubled the monthly payment). Due to the foregoing unanswered questions about the exhibit and the sporadic record of

payments shown within the exhibit, I can only assign limited weight to AE A. In addition, Applicant provided no documentary evidence indicating that he has taken action to resolve the listed medical accounts. (Tr. 30-31; AE A)

### **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