



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



In the matter of: )  
 )  
 [Name Redacted] ) ISCR Case No. 18-01564  
 )  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esquire, Department Counsel  
For Applicant: *Pro se*

02/22/2019

**Decision**

HOGAN, Erin C., Administrative Judge:

On June 26, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On July 20, 2018, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 27, 2018. A Notice of Hearing was issued, scheduling the hearing via video teleconference on November 7, 2018. The case was transferred to me on November 7, 2018. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A – B. The transcript (Tr.) was received on November 16, 2018. The record was held open until November 21, 2018, to allow Applicant to submit additional documents. Applicant

submitted documents on two separate occasions which were admitted without objection as AE C and AE D. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 56-year-old potential employee of a Department of Defense contractor seeking a security clearance. He is being sponsored for a security clearance by the DoD contractor and will be hired as a linguist if he receives a security clearance. Applicant was born in Iraq and immigrated to the United States in 1980 at the age of 18. He became a US citizen in 1989. From 1990 to 1995, he served on active duty in the US Air Force. He separated with an honorable discharge. After his active duty tour, he served in the Air National Guard from September 1995 to August 1998. He earned a bachelor of science degree while serving in the Air National Guard. He studied for a master's degree, but did not complete the master's program. From 2002 to 2005, he attended medical school. He earned his doctor of medicine (MD), but never practiced as a doctor because he did not complete a medical residency. (Gov 1; Gov 5; Gov 6)

From 2008 to 2011, Applicant served as a contract linguist overseas. He held a secret clearance during this period. After his return to the United States, he occasionally worked for his brother's translation business. Applicant never found a full-time job. He took care of his mother who suffered from dementia until she was put in an inpatient facility in August 2017. She passed away in July 2018. Applicant was married and divorced twice. His most recent divorce occurred in 2007. He has no children. (Tr. 21, 24, 27, 29-30. 52-59; Gov 1; Gov 6)

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

Applicant's security clearance background investigation revealed the following delinquent debts: a \$3,814 judgment filed against Applicant in February 2016 for a delinquent credit card debt (SOR ¶ 1.a: Gov 2 at 2-3); a \$4,910 judgment filed against Applicant in August 2016 (SOR ¶ 1.b: Gov 2 at 4-5); a \$935 judgment filed against Applicant in November 2017 (SOR ¶ 1.c: Gov 2 at 6-7); six charged-off delinquent student loans in the respective amounts of \$31,776; \$29,514; \$28,741; \$27,500; \$18,627; and \$15,620 (SOR ¶¶ 1.d – 1.i: Gov 3 at 3-4; Gov 4 at 2).

Additional delinquent accounts include: a \$4,596 charged off credit-card account (SOR ¶ 1.j: Gov 3 at 4; Gov 4 at 2); a \$4,092 charged-off credit-card account (SOR ¶ 1.k: Gov 3 at 4; Gov 4 at 2); a \$3,466 charged-off credit-card account (SOR ¶ 1.l: Gov 3 at 4; Gov 4 at 2); a \$2,047 charged-off account (SOR ¶ 1.m: Gov 3 at 4; Gov 4 at 2-3); a \$437 charged-off department store credit-card account (SOR ¶ 1.n: Gov 3 at 5; Gov 4 at 3); a \$3,514 delinquent account that was placed for collection (SOR ¶ 1.o: Gov 3 at 12); a \$1,445 delinquent account placed for collection (SOR ¶ 1.p: Gov 3 at 12; Gov 4 at 3); a \$719 delinquent account that was placed for collection (SOR ¶ 1.q: Gov 3 at 12); and a \$624 debt owed to a timeshare that was placed for collection (SOR ¶ 1.r: Gov 3 at 12).

Additional delinquent accounts include: a \$610 delinquent debt placed for collection (SOR ¶ 1.s: Gov 3 at 12; Gov 4 at 3); a \$610 phone or cable debt placed for collection (SOR ¶ 1.t: Gov 3 at 13); a \$107 cable television bill placed for collection (SOR ¶ 1.u: Gov 3 at 13); and an \$18,114 student loan that was past due in the amount of \$868 (SOR ¶ 1.v: Gov 4 at 2). Applicant also admits he failed to file federal income tax returns for tax year 2016. (SOR ¶ 1.w: Gov 4 at 2)

Applicant admits all of the debts. The student loans were private loans he took out to finance a master's program and his medical school. He began to encounter financial problems when he attended medical school. His wife filed for divorce when he was in medical school. He made some student-loan payments while he was working as a linguist, but stopped making payments in 2012 after he returned to the United States because he could not afford to make payments. Applicant earned \$145,000 annually as a linguist. He lost the position when the mission ended and the contract linguist staff was reduced. (Tr. 45-47)

When Applicant returned to the United States he used money earned while overseas to purchase and remodel a house. He purchased the house for approximately \$57,000 and spent between \$160,000 to \$180,000 remodeling the house. Applicant estimates the house is worth approximately \$200,000. The house has no mortgage. Applicant testified that he currently earns below the poverty line and that he qualifies for Medicaid. In 2013, he earned less than \$10,000. He could not find a well-paying job. He stayed at home to care for his mother from the summer 2014 to August 2017. He earned \$300 a month caring for his mother. (Tr. 33-37; Gov 6)

When asked why he bought a house rather than pay off his student loan debts, Applicant replied:

Because I needed – if I would've – see, it was just – I thought if just put this money towards paying debt, I wouldn't have anything. And I thought if I could buy a house, I could have something to function from, like a headquarters and go back to work. (Tr. 74)

Applicant has a side business of selling guitars on the Internet. He claims the market is slow and he has not made many sales because customers would like to purchase the guitars well below market prices. He estimates his guitar collection is worth \$15,000. He also purchased several Persian rugs when he was in Iraq with the purpose of selling the rugs in the U.S. He discovered that the market is saturated with Persian rugs and he would be unable to sell them for a profit. He also occasionally bought and sold cars. (Tr. 35, 71-73; Gov 6)

Applicant admits he did not file his federal income tax returns for tax year 2016. During the hearing, Applicant volunteered that the last time he filed his federal income tax returns was 2015. He did not file for tax year 2017. It is not clear whether Applicant is required to file an income tax return because of his low income. I considered this and also considered that Applicant's failure to file his 2017 tax return was not alleged in the

SOR. I will not consider it when applying the disqualifying factors. However, I will consider it to assess Applicant's overall financial situation, when considering matters in mitigation, and when applying the whole-person analysis.

Applicant made payments towards the student loans alleged in SOR ¶ 1.v for a while. After the hearing, he provided documents showing the current balance on the loans to be \$4,791 and \$18,472. Applicant consolidated these loans with his former wife when they were still married. (AE B; AE C, tab 3) Applicant paid another student loan off in full. This loan was not alleged in the SOR. (AE A, AE C, tab 1) Applicant has not attended formal financial counseling. (Tr. 75)

After the hearing, Applicant provided statements from his private student-loan creditor indicating that the student loans alleged in SOR ¶¶ 1.e – 1.f are no longer being collected because the statute of limitations expired for each of these loans. Applicant may receive a Form 1099 for this forgiveness. (AE D) There is one remaining student loan with this creditor with a balance of \$31,776. (SOR ¶ 1.d)

#### **Guideline E, Personal Conduct:**

Under Personal Conduct, Applicant's is alleged to have falsified his answers to several questions regarding his financial situation on his e-QIP application which was signed by him on July 12, 2017. In response to "Section 26 – Financial Record – Delinquency Involving Enforcement – Other than previously listed, have any of the following happened to you? . . . . In the past seven (7) years, you had had a judgment entered against you?" Applicant answered, "No." He did not list the two judgments entered against him in 2016 which are alleged in SOR ¶¶ 1.a and 1.b. (Gov 1)

Applicant also answered, "No" in response to the "Section 26 – Financial Record – Delinquency Involving Routine Accounts – Other than previously listed, have any of the following happened? . . . . In the past seven (7) years, you had bills or debts turned over to a collection agency? . . . . In the past seven (7) years, you had nay account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . . In the past seven (7) years, you defaulted on any type of loan? . . . . In the past seven (7) years you had bills or debts turned over to a collection agency? . . . . In the past seven (7) years, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . . In the past seven (7) years you have been over 120 days delinquent on any debt not previously entered?" Applicant did not list any of the delinquent accounts alleged in SOR ¶¶ 1.d – 1.u.

Applicant testified that he is not sure why he did not list his judgments and delinquent debts on his e-QIP. He said his failure to answer, "Yes" could have been a mistake, or possibly he did not understand what the questions meant. He must have overlooked the question regarding judgments. His failure to list his 2016 judgments was not deliberate. Applicant testified that he did not understand what was meant by "judgment". He admits that he appeared at trial regarding the judgment alleged in SOR

¶ 1.b, but understood that he and the attorney settled the matter before judgment. (Tr. 63-66)

Applicant admits that he had debts that delinquent for more than 120 days when he completed the e-QIP. He is not sure why he answered, “No” to the questions under Section 26 – Delinquency Involving Routine Accounts. (Tr. 66-69)

### **Whole-Person Factors:**

Applicant submitted certificates and awards related to his honorable military service in the US Air Force; documents related to his medical school training and education to include favorable reference letters; and certificates of appreciation related to his service as a contract linguist in Iraq. (AE C, Tabs 2 and 4)

Applicant does not understand why his poor financial situation would raise a security concern. He believes he has demonstrated his loyalty by serving honorably in the US Air Force, and by handling classified information without incident as a linguist in Iraq. He assumed that since he was granted a security clearance in the past, his security clearance should continue. He intends to pay his debts once he finds a well-paying job. (Answer to SOR)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 access 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.

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 as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

#### **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. 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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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 has a long history of financial problems. He incurred approximately \$169,892 in delinquent student loans. Three judgments were entered against him, an approximate total of \$9,659. He also has 12 delinquent consumer accounts, an approximate total of \$22,267. AG ¶¶ 19(a) and 19(c) apply. Although Applicant admitted to not filing his 2016 federal income tax return, there is insufficient evidence in the record to show that he earned enough income to require the filing of a federal tax return. I find AG ¶ 19(f) does not apply and find SOR ¶ 1.w for Applicant.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

- (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; and

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

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. He has a history of not meeting his financial obligations since at least 2012 when he was laid off from his overseas linguist position. Instead of looking for additional employment, he stopped working and lived off credit cards. Most of the accounts are now delinquent. Applicant's financial irresponsibility continues to raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies, because Applicant claims that he could not work when he returned from Iraq in 2012, because he had to care for his mother who had dementia, which could be considered a circumstance beyond his control. However, the decision to remain unemployed was Applicant's choice. Other options could have been pursued to care for his mother, such as adult daycare. Applicant's father and siblings lived in the area. They could have helped care for her. Regardless, I cannot conclude Applicant acted responsibly under the circumstances because he chose to purchase a house with the money he earned while working overseas while ignoring his student loans and other delinquent debts. For this reason, AG ¶ 20(b) is given less weight.

AG ¶ 20(d) does not apply. I cannot conclude that Applicant made a good-faith effort to resolve his delinquent debts. He entered into a payment plan regarding the student loan alleged in SOR ¶ 1.v and resolved one student loan that was not alleged in the SOR, but has ignored his other delinquent accounts. He provided evidence that six of his student loans (SOR ¶¶ 1.e -1.i) are no longer collectible because the statute of limitations has passed. However, the DOHA Appeal Board has long held that passively waiting for debts to pass the statute of limitations to pass is not a good-faith effort to resolve one's debts. "Reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive." (ISCR Case No. 07-06841 at 4. App. Bd. Dec. 19, 2008) Applicant's failure to pay his student loans and other debts is further aggravated by the fact that he purchased and remodeled a home instead of paying his debts.

Applicant did not mitigate the security concerns raised under Financial Considerations.

### **Guideline E – Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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 the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case:

AG ¶ 16(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(a) applies with regard to Applicant's omission of his unpaid judgments alleged in SOR ¶ 2.a and his deliberate omission of his delinquent debts alleged in SOR ¶ 2.b. Applicant's explanation for not listing his financial delinquencies on his security clearance application was not credible. He admits to being aware of the judgments, and admits he lived off credit cards during the past seven years while he was underemployed. Applicant's deliberate omission of his unpaid judgments and delinquent accounts on his e-QIP application raises questions about his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations. This raises questions about Applicant's ability to handle classified information.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition applies. Applicant did not make a prompt, good-faith effort to correct his omitted financial delinquencies. His deliberate omission of his delinquent accounts on his security clearance application was serious and raised questions about Applicant's reliability, trustworthiness, and judgment.

### **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), 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 considered Applicant's honorable military service as well his past employment as a linguist in an overseas location. I considered Applicant's period of unemployment and underemployment while caring for his mother who suffered from dementia. However, he should have known that he needed to be suitably employed in order to pay his bills. Applicant ignored his student loans while purchasing and remodeling a house with the cash he earned while working overseas as a linguist. He has a significant amount of delinquent debt and has made no attempt to resolve any of his accounts. He promises to pay off his debts in the future once he gets a suitable job. A promise to pay in the future does not demonstrate a good-faith effort to resolve one's financial situation and is not a substitute for a track record of paying debts in a timely manner. (ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008)). I also considered Applicant's deliberate omission of his judgments and delinquent accounts on his July 2017 e-QIP application. Applicant's financial situation is unstable and it is unlikely to improve in the near future. Questions remain about Applicant's trustworthiness and reliability. Security concerns under financial considerations and personal conduct are not mitigated.

### **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.v:	Against Applicant
Subparagraph 1.w:	For 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 to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge