



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01220  
)  
Applicant for Security Clearance )  
)

**Appearances**

For Government: Raashid S. Williams Esq., Department Counsel  
For Applicant: *Pro se*

02/24/2020

**Decision**

MASON, Paul J., Administrative Judge:

Applicant’s financial problems were caused by Applicant being assigned to certain positions without being given an accurate description of the jobs beforehand, and temporary job contracts ending prematurely. However, considering the lack of credible evidence of financial counseling and strong financial practices, Applicant has failed to provide sufficient evidence to mitigate the lingering security concerns arising from the guideline for financial considerations. Eligibility for security clearance access is denied.

**Statement of the Case**

On September 26, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On April 23, 2018, he provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM). After reviewing the results of a security background investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant a security clearance, and issued to

Applicant a Statement of Reasons (SOR), dated May 6, 2019, detailing security concerns under 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant provided his notarized answer on May 31, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 27, 2019, for a hearing on October 1, 2019. The hearing was held as scheduled. The Government's four exhibits (GE) 1-5 and Applicant's one exhibit (AE) A was entered into evidence without objection. The exhibit has been divided into three exhibits (AE A-C). Applicant's post-hearing submission (AE D) was received on October 8, 2019. Department Counsel interposed no objection. AE D was entered into evidence. The record in this case closed on October 17, 2019, when DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

The SOR alleges that Applicant owes two delinquent credit card debts totaling \$29,107 (SOR 1.a, 1.b). He admitted both allegations with explanations. His original intention was to let both credit card accounts remain in default during the running of the state statute of limitations. After the statute expired, the accounts would be removed from his credit report and become uncollectible. When Applicant received the SOR in May 2019, he took action to pay back the debts. (May 2019 answer to SOR)

Applicant is 44 years old. In May 1999, he received a bachelor's degree in journalism. In the same month and year, he began serving on active duty in the United State Army (USA). He received an honorable discharge in September 2004. He has owned his own home since 2007. He married in 2011 and has a five-year-old daughter. He has had a security clearance since 1994. (GE 1 at 9-10, 25 44; GE 2 at 7; Tr. 9)

Between 2004 and 2007, Applicant was working in security-related intelligence positions. Since 2007, he has held positions related to information technology (IT). In his current job that he began in March 2019, he manages a website for a federal government agency. (GE 1 at 12- 22; May 2019 answer to SOR; AE C; Tr. 8-9)

Before Applicant's current employment, he was unemployed in February 2019, after working in a 1099 temporary position from November 2018 to February 2019. The unemployment occurred when the temporary contract ended. (GE 1 at 12- 22; May 2019 answer to SOR; AE C; Tr. 8-9)

Applicant's unemployment between June and July 2017 was due to leaving his previous job (January to June 2017) by mutual agreement after receiving a notice of unsatisfactory performance. Applicant was not completely qualified for his job and his client was difficult to work for. During the early part of this employment, Applicant took

two recreational trips out of the United States. Each trip lasted up to five days. (GE 1 at 12-22, 37-40; GE 2 at 4-5; May 2019 answer to SOR)

Applicant's unemployment from September 2014 to March 2015 occurred when his previous employment contract ended. In his previous job, a 1099 position, he was employed from August 2013 to September 2014. In March 2014, Applicant took a recreational trip out of the United States. The trip lasted up to five days. (GE 1 at 12- 22, 37-40; May 2019 answer to SOR; AE C; AE D at 9-10; Tr. 8-9)

Applicant's unemployment from April to August 2013 was due to his unanticipated release from a contract after working for an employer from May 2012 to April 2013. His supervisor was asking him to do work that he did not know how to do, and the supervisor could not find Applicant another suitable position. In September 2012, Applicant took a recreational trip out of the United States. The trip lasted up to five days. (GE 1 at 12- 22, 37-40; May 2019 answer to SOR; AE C; Tr. 8-9)

SOR 1.a and 1.b – These two accounts are credit cards that Applicant opened in 2004. He used the cards to purchase items for his house and child. Applicant was aware that both credit cards became delinquent by January 2014 because he could not maintain the payments. The collection agency contacted him on a weekly basis for payment until the middle of 2016 when they stopped. (GE 2 at 8; GE 3 at 2)

Applicant informed the OPM investigator in his April 2018 PSI that the two credit card debts (SOR 1.a, 1.b) became delinquent during his unemployment in December 2013 and January 2014. I find the OPM investigator misunderstood him because when Applicant discussed his unemployment in an earlier part of the PSI, he did not mention that he was unemployed in December 2013 or January 2014. His September 2017 e-QIP, his May 2019 answer to the SOR, and his resume indicate that he was working as a 1099 employee for a medical health agency between August 2013 and September 2014. I find that Applicant was referring generally to the overall negative impact that the occasional unemployment was having on his bill-paying ability. (GE 1 at 16; GE 2 at 8-9; AE C at 2)

Regarding his intentions of avoiding similar financial problems in the future, Applicant indicated in his April 2018 PSI that he intended to repay all his debts, but was unable to state when. He planned on "spending less and saving more." During the period after his April 2018 PSI, and before he filed his May 2019 answer to the SOR, Applicant changed his mind and decided not to repay the listed debts, opting to wait on the state statute of limitations to run so that the debts would be removed from his credit report. In his answer to the SOR, he decided to address the two debts. At the October 2019 hearing, Applicant testified that his plan was "to pay off all debts and aggressively start saving." (GE 2 at 9; Tr. 35; May 2019 answer to SOR)

Attached to his May 2019 answer to the SOR, Applicant explained that he received financial advice from his facility security officer (FSO) and a financial advisor

about how to address the two listed debts. Based on that advice, Applicant contacted the creditor in SOR 1.a and 1.b between May 16 and May 21, 2019, and negotiated a settlement of each debt and corresponding payment plans. The combined settlement amount is \$8,592. This was the first documented time that Applicant contacted the creditor to discuss settlement even though he knew the delinquent status of the debts since at least 2014. He has made regular monthly payments from June through September 2019. Both debts are scheduled to be paid off by May 2020. (May 2019 answer to SOR; AE A; AE D at 15-20)

The financial adviser provided recommendations on how Applicant could repair his credit. No further information was provided. Applicant has had no additional financial counseling other than the information he supplied in his answer to the SOR in May 2019. He does not utilize a written budget in managing his finances. Instead, Applicant keeps a mental budget because he knows what the monthly expenses will be. He retains \$200 for personal expenses out of his bi-monthly paychecks for unforeseen expenses. Based on the figures Applicant provided, his take home pay is about \$7,000 a month and his expenses, including payments to the two creditors and the Internal Revenue Service (IRS), amount to \$5,150, leaving a discretionary monthly remainder of \$1,850. However, Applicant believed his monthly remainder was \$500 to \$600. He has \$2,000 in his checking account and \$1,500 in his savings account. (May 2019 answer to the SOR at 3-4; Tr. 25-31, 32, 36)

Though unalleged in the SOR, the Government asked Applicant whether he owed federal or state taxes. He replied that he owes federal taxes of at least \$18,000. He explained that the delinquent taxes occurred because he did not report his taxable income as a 1099 employee in 2013 and 2014. Even though he was employed in the position for more than a year, and was 38 years old during this employment, he claimed that he did not know the quarterly tax filing requirements for a 1099 employee. In documentation prepared by the IRS, dated October 3, 2019, Applicant owes approximately \$4,583 for federal tax year 2014. He contended that regular monthly payments of \$300 since 2014 reduced the original amount of \$19,714 to \$4,583. His documentation reflects that he has been paying the tax debt since October 2018. Applicant could have presented his bank records to show proof of payment to the IRS during all or part of the period before October 2018. Applicant paid the corresponding, delinquent state taxes due for 2013 and 2014, in periodic payments over an eight-month period ending in December 2014. (GE 2 at 7; AE D at 2-3, 5-8; Tr. 36-38)

Applicant filed his 2018 W-2 Form with an erroneous notation that he was exempt from federal taxes for the year. As a result, he owes additional federal taxes of \$14,488 for federal tax year 2018. The combined total of delinquent federal taxes for federal tax years 2014 and 2018 is \$19,079. In May 2019, his payments were increased to \$500 a month to account for the additional delinquent taxes owed for tax year 2018. Applicant's IRS tax issues will be addressed in the discussion under the whole-person concept. (AE D at 2-3, 5-8; Tr. 36-38)

Applicant provided no character evidence regarding his performance on the job or his reputation in the community where he lives.

### **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 could raise security concerns and may be disqualifying:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The Government's 2018 and 2019 credit reports, Applicant's May 2019 answer to the SOR, and the record establish the Government's case under the guideline for financial considerations. Applicant has a history of not meeting his financial obligations. For a period of time before he provided his May 2019 answer to the SOR, Applicant intended to rely on the running of the state statute of limitations to have the two listed debts removed from his credit report. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies to the period when Applicant initially decided to let the SOR debts remain in default under the state statute of limitations until the debts were removed from his credit report.

The pertinent mitigating conditions under AG ¶ 20 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.

AG ¶ 20(a) does not apply. Though there are only two delinquent debts listed in the SOR, the amount of combined debt is sizeable. While Applicant acknowledged the two debts in his September 2017 e-QIP, and indicated he would resolve them in his April 2018 PSI, he took no documented action until after he received the SOR in May 2019 to negotiate and settle the indebtedness. Applicant made no documented effort to contact and keep the creditor informed between 2014 and May 2019 about his employment issues, why he could not pay the delinquencies, and when he would be able to pay or settle the debt.

Applicant receives some mitigation under the first prong of AG ¶ 20(b) because of four varying periods of unemployment between 2013 and March 2019. On the other hand, he receives limited mitigation under the second prong of AG ¶ 20(b) because he did not take any documented action (acting responsibly under the circumstances) on the delinquent debts until May 2019. On one occasion in March 2014, and twice in January 2017, instead of applying his earnings to the SOR debts, Applicant chose to apply the earnings to finance three vacations of five days or less to locations outside of the United States. Overall, Applicant receives limited mitigation under AG ¶ 20(b).

AG ¶ 20(c) applies when there is evidence of financial counseling and there are clear indications the problem is being resolved or under control. The only financial counseling Applicant received was in May 2019, when the FSO made recommendations about how to negotiate and settle debts. Applicant provided no information on the advice the financial adviser provided to repair his credit. His future plans expressed at the October 2019 hearing to responsibly manage his finances by saving more aggressively and spending less have not changed since the plans he expressed in his April 2018 PSI. He relies on a mental rather than a written budget. Applicant receives negligible mitigation under AG ¶ 20(c).

AG ¶ 20(d) has only partial application in light of Applicant's original decision to allow the two debts to remain delinquent until the running of the state statute of limitations, at which time the debts would become legally uncollectible. Relying on the statute is one approach to avoid paying delinquent debts, but it does not show a good-faith effort to resolve debts within the meaning of AG ¶ 20(d) and the Directive. See ISCR Case No. 07-06841 at 4 (App. Bd. Dec. 19, 2008).

### **Whole-Person Concept**

I have examined the evidence under the specific guideline (financial considerations) 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 44 years old and married with one child. He has owned his home since 2007. I have considered his periodic unemployment since 2013. However, Applicant's irresponsibility in failing to address the two listed delinquencies from 2014 to May 2019 is not mitigated by four payments under a payment plan launched four months before the October 2019 hearing. Evidence of avoiding substantial delinquent debts is not suddenly mitigated by payments under a payment plan that is motivated primarily by the pressure of seeking security clearance eligibility. Applicant's financial irresponsibility is aggravated by his purported unfamiliarity with the federal and state tax ramifications of his 1099 employment for over a year in 2013 and 2014, resulting in over \$19,000 in delinquent federal taxes. Significantly, he was 38 years old during this 1099 employment. His good judgment in satisfying the state taxes due for the period and complying with the federal tax repayment plan is outweighed by Applicant's puzzling poor judgment in submitting a W-2 Form for tax year 2018 with inaccurate information indicating he was exempt from federal taxes for the year. Given the fact that Applicant has held a security clearance for 25 years, he knew or should have known that delinquent debts and taxes raise security concerns. Considering the evidence in light of the whole-person factors, Applicant has not mitigated the security concerns emanating from the guideline for financial considerations.

### **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

### **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