



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



In the matter of: )  
)  
)  
[NAME REDACTED] ) ISCR Case No. 20-01074  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel  
For Applicant: *Pro se*

04/05/2021

**Decision**

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns raised by Applicant’s financial problems, and by her omission of adverse financial information from a security clearance application. Applicant’s request for eligibility for access to classified information is granted.

**Statement of the Case**

On September 18, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of her employment with a defense contractor. After reviewing the completed background investigation, adjudicators for the Department of Defense (DOD) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information, as required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On September 23, 2020, the DOD issued a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence (DNI) on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

On December 2, 2020, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM) that was received by Applicant on January 13, 2021. The FORM contained six exhibits (Items 1 – 6) on which the Government relies to support the SOR allegations. Applicant was informed she had 30 days from receipt of the FORM to submit additional information. She did not submit anything further and the record closed on February 12, 2021. I received the case for decision on March 12, 2021.

### **Findings of Fact**

Under Guideline F, the SOR alleged that Applicant owes \$42,534 for ten delinquent debts (SOR 1.a – 1.j). Under Guideline E, the SOR alleged that Applicant intentionally falsified her responses to questions in e-QIP Section 26 (Financial Record) when she failed to list the debts alleged at SOR 1.a – 1.i. (SOR 2.a)

In response, Applicant admitted with explanations the allegations at SOR 1.a – 1.j. Her Answer (FORM, Item 2) consisted of a one-page statement, a two-page response to each SOR allegation, and 16-pages of documents in support thereof organized by each Guideline F allegation. As to SOR 2.a, Applicant in her one-page statement denied intentionally withholding adverse financial information from her e-QIP. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 25-year-old employee of a defense contractor, for whom she has worked since September 2019, and who is sponsoring her request for a security clearance. After graduating from college in June 2017, Applicant worked for two years for a different company in a similar position; however, she did not require a security clearance for that job. This is her first application for clearance. (FORM, Items 3 and 4)

Applicant disclosed in her e-QIP the delinquent utility bill alleged at SOR 1.j, stating that she was in the process of setting up a repayment plan. She also listed a \$706 state income-tax debt for the 2018 tax year, which she paid off in September 2019; and a past-due \$234 debt for unpaid insurance premiums, also paid off in September 2019. By the language of e-QIP Section 26 questions about delinquent routine accounts, and as documented by a credit report obtained by investigators shortly after she submitted her e-QIP, Applicant also should have listed the debts at SOR 1.a – 1.i. During a personal subject interview (PSI) with a government investigator on October 7, 2019, and in response to the SOR, Applicant attributed her omissions of this information to confusion about what information the questionnaire required. (FORM, Items 2 – 4)

Applicant's financial problems began when she moved in with her now-ex-boyfriend in February 2018. They lived together until she ended the relationship and moved in with her parents in January 2019. During that relationship, Applicant claims she had to pay most of their joint living expenses and debts. The debts at SOR 1.d, and 1.g – 1.j were incurred and became delinquent during her relationship with her ex-boyfriend. Applicant paid off SOR 1.h in November 2019, and completed a repayment plan for SOR 1.i in March 2020. The debts at SOR 1.g and 1.j were paid off in September 2020. In October 2020, Applicant began a \$250 per month repayment plan to resolve SOR 1.d, which is the balance due after resale of a car that was repossessed in October 2018. (FORM, Item 2 - Appendix A; Items 3 – 6)

Applicant incurred the debts alleged at SOR 1.a – 1.c, 1.e and 1.f before moving in with her ex-boyfriend. They became delinquent because she was saddled with paying most of their financial obligations for about 11 months. SOR 1.a – 1.c are being resolved through a debt-repayment plan established through a credit-counseling company in September 2020. That plan calls for resolution of her three largest debts through a single monthly payment of \$1,099 over the next three years. The credit-counseling service also helped Applicant review her monthly budget and determine that after her expenses, including all of her ongoing debt payments, she has about \$1,900 remaining. Because she lives with her parents, Applicant has no housing costs such as mortgage or rent. She has not incurred any new delinquencies and she has about \$24,000 in savings. (FORM, Item 2 - Appendix A)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in AG ¶ 2(d). Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly

consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

Available information shows that between 2018 and 2019, Applicant became delinquent or past due for ten debts totaling \$42,534. When the SOR was issued in September 2020, only four of those debts remained unresolved; however, those four debts represent about 83 percent of the total debt at issue here. This information reasonably raises the security concerns articulated, in relevant part, at 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

More specifically, the Government's information requires application of the following AG ¶ 19 disqualifying conditions:

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

I also have considered the following AG ¶ 20 mitigating conditions:

- (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.

Applicant's financial problems are recent and frequent. She incurred significant debt through multiple accounts, with most of the total debt still unresolved. AG ¶ 20(a) does not apply. By contrast, Applicant's financial problems arose from circumstances beyond her control and are not likely to recur. She established that she acted responsibly by ending the relationship which caused much of her financial distress, moving in with her parents to cut her expenses, and beginning to address her debts. Although not alleged in the SOR, in 2018, Applicant incurred a state income-tax debt and a delinquent insurance debt. She paid off both debts in 2019. In 2019, she also paid off SOR 1.h and began paying down the SOR 1.j, completing that effort in September 2020. Also in 2020, Applicant paid off SOR 1.e – 1.g, and 1.i. Applicant is now engaged in a structured plan for debt repayment and financial counseling that will result in paying off SOR 1.a – 1.c in three years and improving her overall finances. Concurrently, she is repaying the debt at SOR 1.d. The monthly budget she submitted shows that she has a significant net monthly remainder after expenses, including all of her debt payments. She also has savings sufficient to help her tolerate unforeseen expenses. All of the foregoing supports application of AG ¶¶ 20(b) – 20(d) and shows that Applicant's finances will not present similar concerns in the future. The security concerns under this guideline are mitigated.

## **Personal Conduct**

The security concern under this guideline is stated in relevant part at AG ¶ 15 as follows:

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.

In SOR 2.a, it was alleged that Applicant intentionally withheld adverse information about debts when she responded to e-QIP Section 26 questions. Applicant's denial of that allegation created a controverted issue of fact, which left the burden of proving that

allegation with the Government. Available information established that she omitted the debts at SOR 1.a – 1.i; however, to be disqualifying her omissions must be shown to be intentional, as stated in 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant disclosed one of the debts alleged in the SOR, as well as two others not at issue here. Available information probative of her intent tends to show that she was not trying to hide the fact she had unpaid debts, explaining among her disclosures that she experienced about a year of financial hardship. With these facts in mind, her claim that she may have been confused about what she was required to disclose is plausible. Accordingly, I conclude Applicant did not intend to falsify her answers or to mislead the government about her financial problems. The security concerns alleged under this guideline are resolved for the Applicant. In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines E and F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). A fair and commonsense assessment of all of the available information in this case supports a conclusion in favor of the Applicant.

### **Formal Findings**

Formal findings 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:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is granted.

MATTHEW E. MALONE  
Administrative Judge