



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
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) ISCR Case No. 20-01030  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel O'Reilley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

07/08/2021

**Decision**

MASON, Paul J., Administrative Judge:

While the record shows that Applicant's financial problems were partially caused by his father's unforeseen medical issues in 2011 and 2018, he exacerbated the problems through financial mismanagement. To his credit, however, nine months before the Statement Reasons (SOR) was published in June 2020, he paid off one of the five listed creditors. He paid the second listed creditor six months before receiving the SOR. He settled with the third creditor in December 2020. He is currently enrolled in a rehabilitation agreement for his student loans and is repaying \$271 a month. Eligibility for security clearance is granted.

**Statement of the Case**

On April 23, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) seeking security clearance eligibility required for a position with a defense contractor. After an investigation, the Department of Defense (DOD) Defense Counterintelligence Security Agency (DCSA) could not make the affirmative findings required to grant a security clearance. DCSA issued Applicant a

SOR, dated June 18, 2020, 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 adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided his notarized answer on July 13, 2020. He initially requested that his case be decided on the administrative record. At the request of his attorney, Applicant's case was converted to a hearing on December 14, 2020. See GE 1. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 26, 2021, for a hearing on April 19, 2021. The hearing was held as scheduled. The Government's exhibits, formerly marked as Item numbers, were relabeled exhibits. Eight of the Government's nine exhibits (GE) 1-9, were admitted into evidence without objection. Applicant's attorney objected to the admission of Applicant's September 2019 interviews (GE 5) with an investigator from the Office of Personnel Management (OPM). The basis of the objection was that the exhibit was unauthenticated. The objection was sustained. See E3.1.20 of DOD Directive 5220.6. At pages 10 and 11 of the transcript (Tr.), the Government withdrew GE 5 from evidence. I remarked GE 5 as GE 10 and noted in the lower right-hand corner of the exhibit that it was withdrawn from the record. Applicant's ten exhibits (AE) A-J were entered into evidence without objection. The record in this case closed May 10, 2021, when DOHA received the transcript.

### **Findings of Fact**

The SOR alleges three commercial accounts and two student loans. Applicant admitted all allegations. He indicated that the delinquent debts were caused by paying his father's bills during his father's surgeries and ensuing treatment in 2011 and 2018. Even after his father recovered, Applicant continued to pay some of his parents' delinquent bills. Another reason for the delinquent debts was Applicant's unemployment for about 30 days in December 2018, when he was involuntarily removed from an employment contract because of a personality clash with another employee. (GE 2, July 2020 answer to SOR; Tr. 26, 28-29, 62)

Applicant is 38 years old and single. According to his April 2019 e-QIP, he purchased his current residence in December 2010. He earned college credits between August 2000 and December 2002. In December 2004, he received a bachelor's degree in exercise science. He collected additional college credits between August 2007 and September 2008. He has held several security-officer positions since 2011. He currently holds two security officer positions for two different companies. Applicant's security clearance, which he received in 2011, was deactivated at a subsequent security job because it was not required. He currently has a public trust clearance and is seeking a security clearance. (GE 3 at 14-15, 18, 44; Tr. 16, 64)

SOR ¶¶1.a, 1.c – Credit reports reflect that these two student loans first became delinquent in 2012. (GE 4 at 10-11) After notifying the U.S. Department of Education (DOE) that he was interested in rehabilitating his defaulted student loans, Applicant received letters on January 25 and January 28, 2021 from the DOE default servicing center indicating that the delinquent loan balance on his two student loan accounts totaled \$37,963.73. (AE B; Tr. 18-19) The student loan servicer calculated his monthly repayment amount at \$271. According to the repayment agreement, he was required to make nine consecutive payments. The servicing center explained to him that compliance of the repayment agreement was a requirement for rehabilitating the student loan. (AE B)

Applicant provided bank statements (AE E, F, and G) displaying repayments for the student-loan accounts. AE F shows a student loan repayment of \$271 was made on February 5, 2021, and posted on February 8, 2021. AE E reflects a \$271 repayment was made on March 8 and posted on March 9, 2021. AE G indicates a \$271 repayment was made on April 7 and posted on April 8, 2021. Though Applicant has made three successive repayments under the agreement, he has five additional payments to make to qualify for rehabilitation of his student loans. According to the credit bureau reports and Applicant's testimony, before his student loans became delinquent in 2012, his monthly payment was approximately \$575 a month. (Tr. 18-19, 32, 66; GE 3 at 47; GE 4 at 5, 10-11; GE 7 at 4, 5; AE B)

Applicant initially testified that he stopped making student-loan payments when his father had his first surgery in 2011. He indicated that he made occasional payments on his student loans over the life of the loan, but could not indicate when he made those payments. He also was helping his parents with their mortgage and other bills, but he was unable to provide any specific details. (Tr. 32-35)

SOR ¶1.b – This is a delinquent credit-card account for \$1,304 that was opened in June 2018, and reached a delinquent status in September 2018. (GE 4 at 5; GE 6 at 2; GE 8) In June 2019, the government investigator advised Applicant of the three commercial debts. He settled this account on December 31, 2020. (Tr. 38-39, 44; AE A)

SOR ¶1.d – This is a security-camera-company account (\$1,174) that was sold to a collection company in June 2019. (GE 4 at 11) Applicant assumed he had settled the account, only to discover he had two accounts. On January 16, 2020, Applicant settled the account for \$500. (Tr. 41-43; AE J)

SOR ¶ 1.e – This was a credit-card account (\$692) that Applicant opened in January 2018, and the account became delinquent in June 2019. He paid the account in September 2019. (Tr. 39-40; AE H)

According to his security clearance application and his testimony, except for a 30-day period in December 2018, Applicant has been steadily employed since 2010, and has earned approximately \$130,000 a year since 2010. (Tr. 22, 26-30)

Because of the pandemic, Applicant suspended paying his \$1,468 monthly mortgage in June 2020, so that he could catch up on his other bills. However, the other bills did not include the delinquent student loans listed in the SOR. (Tr. 44) One of the other bills was a utility bill. He skipped about seven monthly utility payments necessitating a large payment of over \$1,600 in January 2021. (Tr. 45-48; AE F at 5)

Applicant described his retirement account as a retirement-savings account where \$700 a month was automatically deducted from his paycheck for the past five years. For some unexplained reason, he stopped the automatic deduction recently and makes the monthly deposits himself. His personal financial statement (PFS), dated January 27, 2021, indicates that his net monthly remainder after his monthly expenses and debts are subtracted from his monthly income, is \$4,382. (Tr. 48-50)

In February 2021, Applicant invested in stocks for the first time. He made a \$2,000 investment in a stock on the recommendation of a friend. He stated, "I really don't know much about it. I just started [it]." (Tr. 50; AE F)

A review of Applicant's bank statements (AE E, F, and G) reflect a number of transactions that are large in amount. On March 1, 2021, Applicant loaned \$1,000 to a coworker who is also a friend. The friend "was going through something and he wanted help." (Tr. 54; AE E) Applicant loaned the same friend \$1,000 in April 2021, and explained that he loaned money to this coworker whenever he needed help. He did not know why he loaned the money, but speculated the coworker had bills or issues with his house. (Tr. 51-56)

Applicant described a financial-counseling service in his April 2019 e-QIP. He indicated that he was working with a credit service to learn about improving and managing his credit more effectively. He testified that he may have provided the counseling statement, but claimed that he did not remember, even though he made the statement only two years before the April 2021 hearing. Though he indicated in same April 2019 e-QIP that he had a \$477-a-month payment arrangement with the federal agency to repay his student loans, he could not remember the arrangement because "I spoke to student loans [agency] several times." He again referred to the passage of time as clouding his memory. (Tr. 66)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together 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**

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.

19. Conditions that could raise a security concern and may be disqualifying include:

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

How and when a person pays his bills is a private matter except when evidence reveals that he is not paying his debts in a timely fashion. For a security clearance applicant, showing irresponsibility toward his personal financial obligations suggests that he may display the same attitude and poor judgment toward security rules and regulations he chooses not to follow. Adverse evidence from credit reports can normally meet the Government's obligation of proving delinquent debts. *See, e.g.* ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)

The Government credit reports, Applicant's answers to the SOR, and his testimonial admissions establish a case against him under the financial considerations guideline. AG ¶¶ 19(a) and 19(c) apply based on his two delinquent student loans and three delinquent commercial accounts.

20. 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.

Applicant receives mitigation under AG ¶¶ 20(a) and 20(d) for providing documented evidence verifying settlement of two of the five listed debts within nine months before he received the SOR. In December 2020, he provided documentation of his payoff of the third commercial creditor. He submitted credible documentation of the student-loan rehabilitation agreement and three payments made in February, March, and April 2021.

Sometimes, unanticipated events materialize to create adverse financial consequences in a person's life. After discovering his father needed surgery and follow-up treatment in 2011 and 2018, Applicant paid his father's bills and continued to pay them during his father's recovery. His compassionate response to his father's medical challenges entitles Applicant to mitigation under the first prong of AG ¶ 20(b).

However, Applicant exhibited poor judgment by not continuing to pay his own bills. Except for 30 days in December 2018, Applicant has been steadily employed since 2010, with an income of \$130,000 a year. Given his high income over a ten-year period, a discretionary monthly remainder of over \$4,000, and Applicant's single marital status with no children, he has had abundant funds available to manage his own financial obligations. In sum, Applicant receives only limited mitigation under the second prong of

the AG ¶ 20(b), because he did not act responsibly to address his delinquent debts until September 2019.

The financial entries in Applicant's bank statements demonstrate financial irresponsibility that can be eliminated by devoting more attention to his finances. The only way he can do this is through the assistance of a financial counselor who can teach him to create and maintain a budget that regularly informs him where his money is going, from income to expenses to savings and retirement. The limited mitigation Applicant receives under AG ¶ 20(c) is based on his settlement of three of the five debts, enrollment in a student-loan rehabilitation agreement, and his preparation of a PFS in January 2021.

### **Whole-Person Concept**

I have examined the evidence under the specific guidelines 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.

Factoring into the favorable decision in this case is Applicant's forthrightness during the security investigation. In April 2019, he disclosed all his delinquent debts. Prior to receiving the SOR in June 2020, Applicant resolved two listed debts. In December 2020 and January 2021, he took additional action to either resolve the other debt by and by placing the two student loans within a repayment agreement. At the April 2021 hearing, he provided credible documentation of his overall efforts to resolve the listed debts.

Financial counseling will help Applicant manage his finances more responsibly so that he does not spend his earnings foolishly. In addition to helping him balance his checkbook, counseling will improve Applicant's tracking of his income and his expenses. Counseling will also educate Applicant on how to read a credit bureau report so that he is aware of all debts at all times. On the other hand, should he choose not to obtain counseling, his financial problems will resurface, placing his security clearance

eligibility at risk. Viewing the evidence from a commonsense point of view, Applicant has mitigated the security concerns arising 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: FOR APPLICANT

Subparagraphs 1.a – 1.e: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Paul J. Mason  
Administrative Judge