



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



In the matter of:	)	
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	)	ISCR Case No. 20-02764
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Alan Edmunds, Esquire  
The Edmunds Law Firm

October 15, 2021

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**Decision**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 3, 2017. (Government Exhibit 1.) On December 2, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 18, 2020, and requested a decision on the written record without a hearing before an administrative judge. On March 2, 2021, Applicant requested that the case be heard before an administrative judge. Department Counsel was prepared to proceed on March 3, 2021. The case was assigned to me on March 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 15, 2021. The case was heard by video teleconference on May 26, 2021. DOHA received the transcript (Tr.) of the hearing on June 9, 2021.

The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through P, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant submitted Applicant Exhibits Q, R, and S in a timely fashion and they were also admitted without objection. The record closed on June 21, 2021.

### **Findings of Fact**

Applicant is 45 years old and married for the second time. He has two children from his first marriage. Applicant has been employed by a defense contractor since 2008 and is currently a senior network analyst. He is seeking to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 13A, and 17; Applicant Exhibits M and N; Tr. 21.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant had eleven past-due or charged-off debts. The total amount of the past-due indebtedness was approximately \$46,901 as of the date of the SOR. Applicant admitted all eleven allegations in the SOR. The existence and amount of indebtedness is supported by credit reports in the record dated March 16, 2017; March 13, 2020; October 15, 2020; and January 29, 2021. (Government Exhibits 3, 4, 5, and 6.)

Applicant's financial issues had their genesis in about 2015. That year is when Applicant bought a house. He used credit cards to furnish the house and quickly found himself "over his head" with debt. Applicant found himself unable to pay the credit cards and the mortgage in 2016. He was able to refinance his mortgage in 2017, but the other bills remained unpaid until just recently. (Government Exhibit 2 at 2-4; Tr. 28-29, 32, 44.)

The current status of the debts alleged in the SOR is as follows:

1.a. Applicant admitted owing a creditor \$11,316 for a debt that was charged off. Date of last activity on this account was stated to be September 2016 according to the most recent credit report in the record. The creditor cancelled the debt and issued Applicant a Form 1099-C. This debt is no longer owed by Applicant. (Government Exhibit 6 at 3; Applicant Exhibit O; Tr. 22.)

1.b. Applicant admitted owing a collection agency \$7,839 for a past-due debt. The original creditor reported that the account was 150 days past due in March 2017. Applicant reached a payment agreement with the collection agency for a reduced amount. Monthly payments were due to begin in May 2021. It is not yet resolved. (Government Exhibit 3 at 5; Applicant Exhibit A; Tr. 23, 48.)

1.c. Applicant admitted owing a collection agency \$6,014 for a past-due debt. The original creditor reported that the account was 180 days past due in March 2017. Applicant reached a payment agreement with this creditor. Monthly payments were due to begin in May 2021. It is not yet resolved. (Government Exhibit 3 at 13; Applicant Exhibit B; Tr. 23, 48.)

1.d. Applicant admitted owing a creditor \$5,807 for a charged-off account. The creditor reported in March 2017 that the last activity on the account was in November 2016. Applicant reached a payment agreement with this creditor, and successfully fulfilled it. This debt is resolved. (Government Exhibit 3 at 13; Applicant Exhibits C and R; Tr. 24, 48-50.)

1.e. Applicant admitted owing a creditor \$5,414 for a charged-off account. The creditor reported in March 2017 that the last activity on the account was in August 2016 and that the account was first reported in February 2017. Applicant reached a payment agreement with this creditor. Monthly payments were due to begin in June 2021. It is not yet resolved. (Government Exhibit 3 at 4; Applicant Exhibits P and Q; Tr. 24, 26-27, 50-51.)

1.f. Applicant admitted owing a creditor \$3,673 for a charged-off account. The creditor reported in March 2017 that the account was 150 days past due. The creditor cancelled the debt and issued Applicant a Form 1099-C in June 2020. This debt is no longer owed by Applicant. (Government Exhibit 3 at 10; Applicant Exhibit B; Tr. 23, 48.)

1.g. Applicant admitted owing a creditor \$2,536 for a charged-off account. The creditor reported in March 2017 that the account was 150 days past due. Applicant reached a payment agreement with this creditor, and successfully fulfilled it. This debt is resolved. (Government Exhibit 3 at 13; Applicant Exhibit S; Tr. 24, 51.)

1.h. Applicant admitted owing a collection agency \$1,462 for a past-due debt. This debt does not appear in Applicant's March 2017 credit report. The most recent credit report in the record stated that the account was opened by the collection agency in August 2019. Applicant reached a payment agreement with this creditor, and successfully fulfilled it. This debt is resolved. (Government Exhibit 6 at 2; Applicant Exhibit E; Tr. 25.)

1.i. Applicant admitted owing a creditor \$1,230 for a past-due debt. The most recent credit report in the record stated that this account was "Assigned" on December 21, 2016. Applicant reached a payment agreement with this creditor, and successfully fulfilled it. This debt is resolved. (Government Exhibit 6 at 1; Applicant Exhibit F; Tr. 26.)

1.j. Applicant admitted owing a creditor \$1,216 for a past-due debt. The most recent credit report in the record stated that this account was "Opened" on February 24, 2017. Applicant reached a payment agreement with this creditor, and successfully fulfilled it. This debt is resolved. (Government Exhibit 6 at 2; Applicant Exhibit G; Tr. 26.)

1.k. Applicant admitted owing a creditor \$394 for a charged-off account. The most recent credit report in the record indicated that the "Date Major Delinquency First Reported" was February 2017. Applicant paid this account in full in May 2021. This debt is resolved. (Government Exhibit 6 at 7; Applicant Exhibit H; Tr. 26.)

Applicant submitted documentation showing that he received credit counseling in February 2021. Applicant testified that the counseling "basically taught me how to manage my money better." (Applicant Exhibit I; Tr. 26-27.)

The most recent credit report in the record is from January 29, 2021. It showed that Applicant has been able to maintain payments on his current indebtedness. (Government Exhibit 6.)

## **Paragraph 2 (Guideline E: Personal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he falsified material facts during the clearance screening process. Applicant admitted the allegations under this paragraph, with qualifications.

Applicant filled out an e-QIP on January 3, 2017. (Government Exhibit 1.) Section 26 of that questionnaire concerned Applicant's financial record and has several subparts. As stated in the SOR, with regard to this case, Applicant was asked if, in the seven years before the date he filled out the questionnaire, he had defaulted on any type of loan, he had bills or debts turned over to a collection agency, or had an account charged off for failing to pay as agreed? Applicant answered these questions, "No."

Applicant stated in his Answer, "I admit to failing to realize that these items were in collection. I did know I was behind and trying to keep up and I should have selected

“yes” knowing it was inevitable. When I spoke to an investigator in a face to face meeting I did tell her about my debt and that I planned on reconciling it.”

Applicant was interviewed by an investigator from the Office of Personnel Management on December 6, 2018. The investigator stated in a Report of Investigation:

Subject [Applicant] provided that he has some credit card debt that he did not list as he was not in debt at the time of filling out the form. Subject got into debt as he was excited about his home purchase and wanted to furnish the home and got in over his head with spending. Subject thought he would be able to make all the payments but his spending quickly added up and was unable to make all his payments. Subject does not recall details of each credit card as there is a lot. Subject advised that he fell behind on all credit cards around late 2016 and did not know what to do. (Government Exhibit 2 at 4; Tr. 31, 40-43.)

During the hearing Applicant was asked why he answered, “No,” on the questionnaire. He stated, “At the time, I didn’t think that I had anything on collections, to be honest. I don’t really check my credit report, and I should have at the time, and that’s basically why I put that.” (Tr. 27, 37, 44-45.)

### **Mitigation**

Applicant is a successful and respected employee. The facility security officer submitted a letter on Applicant’s behalf, as did the president of his employer. They state Applicant is a trustworthy individual and recommend him for a position of trust. (Applicant Exhibit K.)

Applicant has received commendations for his work performance. In addition, his evaluations are uniformly positive. (Applicant Exhibits J and L.)

### **Policies**

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire

process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant was alleged to owe approximately \$41,000 in past-due and charged-off commercial debts as of the date the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or 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 is an earnest person. He has recently made strides in resolving his past-due indebtedness. Applicant began to resolve the debts in 2021 only after receiving the SOR. Therefore, these serious delinquencies were recent, so Mitigating Condition (MC) ¶ 20(a) does not apply.

These debts were seriously past due because Applicant overspent money to furnish a new house. There is no evidence that these financial problems were beyond Applicant's control. MC ¶ 20(b) does not apply.

MC ¶ 20(c) has application. Applicant has received credit counseling. In addition, there is evidence that the problem is being resolved and is under control. Two of the major debts alleged in the SOR were resolved by the creditor by cancelling the debt. Several smaller debts have been paid. Almost \$20,000 of debt is being resolved by payment plans. Applicant has addressed all of his previously delinquent debts through one of these means.

MC ¶ 20(d) has application. Applicant has initiated a good-faith effort to repay overdue creditors. He has already paid out a large amount of money, and fully resolved eight of the eleven debts listed in the SOS. In addition, the payment plans he has established for the remaining debts are reasonable and are to be paid by automatic withdrawals. As the DOHA Appeal Board has stated, "An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan." (ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).)

Considering all the facts in this case, and after applying both the Disqualifying and Mitigating Conditions, I find that Applicant has sufficiently mitigated his financial issues. I have considered the fact that Applicant was dilatory in paying these debts. Under the particular facts of this case, his current record of payments has mitigated that fact. Paragraph 1 is found for Applicant.

## **Paragraph 2 (Guideline E: Personal Conduct)**

The concern under this guideline 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 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:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with



medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The following disqualifying condition is applicable under 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's e-QIP contained arguably incorrect information concerning his finances. The record shows that Applicant knew that he had stopped paying his debts in mid-2016. He was asked about whether these debts were in collection, charged off, or in default status in January 2017 and made a conscious decision that his debts did not meet the criteria. The stated disqualifying condition applies to the facts of this case because of that omission.

The following conditions are potentially mitigating under AG ¶ 17:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(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.

As stated, Applicant knew in January 2017 that he had stopped paying his debts in mid-2016. His argument is that he did not know that his delinquent debts were in collection, charged off, or in default, which were the particular questions he was asked. It is noted that the SOR does not allege that Applicant was 120 days delinquent on any

debts as of the date he filled out the e-QIP. An analysis of the information from the available credit reports as shown above is very unclear as to when in 2016 Applicant stopped paying his debts and when in 2016 or 2017 they went to collections. Whether a debt is charged off, in default, or in collections is a term of art for the credit industry. Applicant is not in the credit industry.

The question becomes whether Applicant was reasonable in his conclusion that his debts, while delinquent, were not in collection, or charged off, or in default. I find that he was. It is particularly important to note that several collection agencies did not open their own trade line on the credit reports until after January 2017, when Applicant filled out the questionnaire. Further, he freely disclosed his delinquent indebtedness during his December 2018 security interview without having to be confronted about it. I find that Applicant did not have the requisite intent to deceive the Government as to his debt situation. Guideline E is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant=s eligibility for national security eligibility by considering the totality of the applicant=s conduct and all relevant 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has successfully mitigated the concerns regarding his financial situation and his personal conduct. He has demonstrated rehabilitation and the potential for pressure, coercion, or duress has been mitigated. Overall, the record evidence does not create doubt as to Applicant=s present suitability for national security eligibility and a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by & E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.k:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant=s national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge