



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



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 19-01948  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: Jacalyn Crecelius, Esq.

03/25/2022

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns raised by Applicant's financial problems. His request for a security clearance is granted.

**Statement of the Case**

On March 8, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, make an affirmative determination that it is clearly consistent with the

interests of national security for Applicant to continue to have access to classified information.

On July 26, 2019, the DOD CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was part of the adjudicative guidelines (AG) issued by the Director of National Intelligence 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 hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 16, 2020, and I scheduled a hearing to be convened on March 31, 2020. That hearing was subsequently cancelled because of travel and other restrictions imposed by the Secretary of Defense at the onset of the Covid-19 pandemic. On July 19, 2021, I rescheduled this matter for hearing on August 25, 2021; however, Applicant requested that I continue the hearing pending his retention of legal counsel. I granted his request.

On December 16, 2021, I rescheduled this for hearing via video teleconference on January 12, 2022. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 6. Department Counsel also provided a Government's Exhibit List and Discovery Letters to Applicant dated December 3, 2019 and February 6, 2020. The exhibit list and discovery letters are included in the record as Hearing Exhibits (HX) 1 and 2, respectively.

Applicant testified and produced Applicant Exhibits (AX) A – L. Applicant's List of Exhibits is included as HX 3, and they were admitted without objection. Additionally, I held the record open after the hearing to allow Applicant to submit additional relevant information. I received a transcript of the hearing (Tr.) on January 20, 2022. The record closed on February 4, 2020, when I received AX M – CC. The emails forwarding those exhibits is included as HX 4, and the exhibits were admitted without objection, as stated in an email included as HX 5.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$46,578 for four delinquent or past-due debts (SOR 1.a, 1.c, 1.d, and 1.e), one of which (SOR 1.a) was a federal income tax debt for \$6,584. It was further alleged that Applicant filed a Chapter 13 bankruptcy petition in April 2017 that was dismissed in April 2018 for failure to make payments as required by the petition's wage earners plan (SOR 2.b). In response, Applicant admitted all of the SOR allegations and provided information about his 2017 Chapter 13 petition. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 45 years old and has worked as a civilian military instructor for two different defense contractors since March 2010. He was hired by his current employer in April 2013. Applicant served on active duty in the military between April 1996 and August 2006, and he has held a security clearance since 2004. (GX 1; Tr. 32 – 35)

Applicant was married between 2005 and 2017, when he and his ex-wife divorced after separating in 2014. They have two children, ages 14 and 11 together. Terms of Applicant's divorce required him to pay child support of \$1,200 each month, alimony of \$800 each month, and to provide ongoing medical insurance for his ex-wife and his children. Applicant also was required to pay most of the couple's debts, including mortgage and car loans. (GX 1; GX 2; AX K; Tr. 37 – 38)

The SOR allegations of debt and bankruptcy are supported by GX 1 – 5, by Applicant's discussion of those issues in a personal subject interview conducted on February 10, February 13, and March 6, 2017, and by Applicant's admissions to those allegations. The tax debt alleged at SOR 1.a arose when Applicant claimed his wife and children as dependents on his 2014 federal income tax return. Unbeknownst to him, his wife filed her own 2014 return and claimed their children as exemptions. This precluded Applicant from getting those deductions, resulting in an unexpected federal income tax bill for \$11,693, which he was unable to pay outright. He contacted the IRS in 2015 to establish a repayment plan; however, available information shows that he did not make any direct payments on his 2014 tax bill until September 2021. At that time, Applicant paid \$8,162.55 to the IRS to resolve that debt. The rest of the original obligation likely was satisfied through involuntary diversions of federal income tax refunds for tax years 2014 through 2020. (Answer; GX 1 – 5; AX A; Tr. 35 – 36, 73 – 74)

In addition to his unexpected tax debt, most of Applicant's other financial difficulties stemmed from the expenses associated with his divorce. In addition to his support obligations and the assumption of marital debts, Applicant had to pay rent and other bills associated with living apart from the marital residence. He estimates he had initially about \$600 remaining each month after expenses. In August 2018, his older child suffered a head injury. His medical insurance covered most of the treatment costs, but Applicant still had to pay a \$4,200 deductible. Eventually, he fell behind in car loan payments for two vehicles. One was repossessed in 2016 and resold at auction. The remainder after resale of that vehicle was \$12,211 and is alleged at SOR 1.d. The other vehicle was repossessed and auctioned off in early 2017. The remainder after resale for that loan \$6,420 and is alleged at SOR 1.e. Neither debt has been resolved; however, as will be discussed below, Applicant has sufficient funds available to him to pay both debts. (GX 1 – 4; AX D; AX E; Tr. 37 – 38, 56 – 59, 96 – 97)

Applicant also owed \$21,363 for a delinquent debt for a credit card account as alleged at SOR 1.c. He testified that he incurred the debt by using the card excessively to make ends meet after he and his ex-wife separated. The account became delinquent in January 2016. In October 2021, he reached a settlement with that creditor and paid about \$15,000 to resolve the debt. (AX C; Tr. 38, 56 – 59)

As alleged at SOR 1.b, Applicant filed a Chapter 13 bankruptcy petition in April 2017. By the terms of a wage earners repayment plan, he was required to pay \$724 each month for 60 months to resolve the debts listed in the petition. In January 2018, he was ordered to pay \$1,449 to resolve an arrearage of missed payments, and to resume his \$724 monthly payments; however, by June 2018 had again failed to comply with the terms of the repayment plan and the petition was dismissed. Applicant testified that he did not make the payments, in part, because of his own poor financial management practices. As he testified, he “lost control of [his] finances and it kind of went south.” (GX 5; Tr. 36 – 38)

Around the time the SOR was issued in October 2019, Applicant filed another Chapter 13 petition. According to the repayment plan for that petition, he was required to pay \$985 each month for 60 months starting in November 2019. Applicant made payments for several months; however, at some point the monthly requirement was increased to \$1,707 after it was determined that not all of his liabilities had been included in the petition. Applicant was unable to afford that amount each month and soon fell behind. In May 2021, he was ordered to resume his \$1,707 payments and to pay an additional \$1,138 for six months to bring his account current. He could not make those payments and the petition was dismissed in August 2021. Over the course of 13 months while the petition was viable, Applicant made payments totaling \$22,385. (Answer; GX 6; AX B; Tr. 68 – 73)

After his first Chapter 13 petition was dismissed, Applicant tried without success to contact the creditors listed in the SOR to resolve his debts. Before his bankruptcy petition, he had engaged a financial counseling company to assist in resolving his debts; however, the company he used turned out to be ineffective and unreliable. Since then, the only financial counseling he has received was through the financial counseling courses that are a prerequisite for filing bankruptcy. He also has engaged in various online self-help courses. It was not until after the failure of his second Chapter 13 petition that he took further action to resolve his debts. (GX 2; Tr. 59 – 63, 90)

Applicant’s father died in December 2019. Sometime in 2021, Applicant learned that his father had left him an inheritance of about \$70,000. That money is being managed by Applicant’s mother, who provided him with the funds (a total of about \$23,000) to pay the IRS and credit card debts at SOR 1.a and 1.c, respectively. Applicant testified he used another \$15,000 of the inheritance to pay off the loan for the vehicle he currently drives. He also has been drawing from those funds to improve his financial stability and claimed to have prepaid his renter’s and car insurance policies, and other routine monthly expenses in advance. As to the car repossession debts at SOR 1.d and 1.e, Applicant resumed his efforts to contact those creditors but has not yet been able to progress in resolving those debts. He has made arrangements to repay other debts not alleged in the SOR. (AX Z; AX AA; Tr. 42 – 44, 59, 79 – 81, 90 – 91, 98 – 99)

Applicant's finances have improved recently. While he still pays \$1,200 each month in child support, he no longer is required to pay \$800 in spousal support. Additionally, in March 2021, he began receiving a monthly disability benefit of \$725 from the Department of Veterans Affairs (VA). After regular monthly expenses, he estimates he has about \$1,500 remaining for debt repayments or savings. Applicant has not incurred any new delinquencies since the SOR debts became delinquent, and there is no indication he has ever missed payments on his spousal and child support obligations. (Tr. 74 – 78, 81 – 83)

Applicant files his annual income tax returns as required. For reasons already stated, the only time he has not paid his taxes on time was in 2015 for the 2014 tax year. In his 2019 Chapter 13 petition, there is an entry showing debts for both the 2014 and 2018 tax years. As to the 2018 tax year, available information shows that he actually owed \$809 for that year. Applicant testified that he is unaware of any such debt and there is no other information in the record that would suggest he did not pay his income taxes for 2018. (GX 6; AX B; AX M – U; Tr. 48 – 56, 64 – 68, 73 – 74)

Applicant received several awards and commendation while he was on active duty, including multiple Good Conduct, Army Commendation, and Army Achievement Medals. He also was named Non-commissioned Officer of the Year (NCOY) for two different commands. In civilian life, he has been a solid performer for his current employer. He also has a good reputation among current and former associates for reliability, commitment to his assigned duties, and for good character. (AX G – J; Tr. 29 – 35)

## **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 ¶ 2(d) of the guidelines. 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. (See Department of the Navy v. Egan, 484 U.S. 518)

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**

The Government presented sufficient information to support the SOR allegations that Applicant filed for bankruptcy protection in 2017 and that he incurred a significant amount of unpaid debt that, as of the date of the SOR, had remained unresolved for several years. This information reasonably raises a security concern about Applicant's finances that is articulated 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. 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

(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.

I have considered the following pertinent 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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply because Appellant still has unresolved debts that arose over several years. Accordingly, his financial problems must be viewed as frequent, recent, and ongoing.

AG ¶ 20(b) applies because Applicant's financial problems resulted from his divorce. He incurred extra expenses of supporting two residences when he and his ex-wife separated. Although his spousal support obligation has ended, for several years he was required to pay \$2,000 each month to support his ex-wife and children. The tax debt at SOR 1.a arose after his ex-wife unexpectedly claimed dependent exemptions on her 2014 federal income tax return. When Applicant filed for Chapter 13 bankruptcy protection in 2017, it was a reasonable, albeit unsuccessful, course of action under the circumstances. His second Chapter 13 petition also was a responsible way to resolve his

debts after failing to make sufficient progress in resolving his debts on his own. This second petition appears to have failed because of mistakes made in declaring the debts to be managed therein. Starting in the second half of 2021, Applicant has repaid two substantial debts and has positioned himself to resolve the remaining repossession debts when those creditors can be contacted. Applicant also has been managing his finances responsibly and has ample cash reserves to avoid future problems.

AG ¶ 20(c) applies because Applicant received mandatory counseling through the bankruptcy process and tried to obtain reliable counseling even before his first bankruptcy petition. Additionally, he has avoided additional unpaid debts and his financial problems are under control.

Application of AG ¶ 20(d) does not apply because Applicant only recently began repaying his debts. Finally, AG ¶ 20(g) applies because Applicant has repaid his 2014 tax debt.

On balance, available information shows that Applicant's tax debt was an isolated event and that his finances are unlikely to present a security concern in the future. The concerns raised under this guideline are mitigated. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's debts were not the result of poor judgment or gross financial mismanagement. He acted responsibly given the circumstances presented to him and his financial problems are unlikely to recur. He also presented information that shows him to be of good character and reliability. The record evidence as a whole supports a fair and commonsense conclusion in favor of granting his request for continued access to classified information.

### **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.e: For Applicant

### **Conclusion**

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

MATTHEW E. MALONE  
Administrative Judge