



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 20-01861  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

03/25/2022

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems were the result of circumstances beyond his control, and he has acted responsibly in response thereto. Although Applicant omitted information about his financial problems from his security clearance application, available information shows that he did not intend to provide false answers or to mislead the government. Applicant’s request for a security clearance is granted.

**Statement of the Case**

On October 5, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for possible employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively

determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security to grant Applicant's request for a security clearance.

On October 27, 2020, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for financial considerations (Guideline F) and personal conduct (Guideline E). The guidelines cited in the SOR were among 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 October 25, 2021. Scheduling of this matter for hearing was delayed because Applicant was required to undergo major surgery the first week of December. After being notified of his successful recovery, I scheduled a hearing to be held on February 17, 2022, via online video teleconferencing.

The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 5. Additionally, a copy of a discovery letter dated January 13, 2020, and a list of the Government's exhibits are included in the record as Hearing Exhibits (HX) 1 and 2, respectively. Applicant testified and produced Applicant Exhibits (AX) A – D, which were forwarded by email in advance of the hearing (HX 3). Additionally, I held the record open after hearing to allow Applicant to submit additional information. I received a transcript of the hearing (Tr.) on February 28, 2022. On February 25, 2022, Applicant provided additional information in an email to which were attached three documents identified as AX E – G. The email forwarding those exhibits is included in the record as HX 4. The record closed on March 1, 2022, when I received Department Counsel's waiver of objection to the admissibility of Applicant's post-hearing submissions.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$28,031 for 13 delinquent or past-due debts (SOR 1.a – 1.m). Under Guideline E, the Government alleged that Applicant deliberately omitted the debts at SOR 1.b – 1.m in response to questions in Section 26 (Financial Record) of his e-QIP (SOR 2.a). In response to the SOR (Answer), Applicant admitted with explanations all of the Guideline F allegations. As to the Guideline E allegation, Applicant admitted that he did not answer the Section 26 questions correctly but denied doing so intentionally. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 54 years old and has worked as a computer technician for a defense contractor since October 2019. This is his first request for a security clearance. Applicant and his wife have been married since July 2010, and they have one 12-year-old child.

Applicant's wife suffers from medical problems that have prevented her from working outside the home for most of their marriage. (GX 1; Tr. 30)

Starting in June 2009, Applicant worked for a television production company as a technician in State A. In January 2013, his employer transferred him to State B, which has a markedly higher cost of living than State A. In August 2015, Applicant was transferred to State C, where he still resides.

In October 2016, Applicant was laid off, but he was hired by another company in that industry later the same month. Unfortunately, his new employer started downsizing in March 2018 and Applicant again was laid off. Between March and September 2018, Applicant worked part-time delivering the U.S. mail in a rural area. He also found part-time work delivering pizza and with Uber and Lyft. In October 2018, Applicant was hired to work full time at a truck stop, where he worked until he was hired by his current employer. (Answer; GX 1; GX 2; Tr. 35 – 36, 64 – 70)

The debts alleged in the SOR are documented through the credit reports produced by the Government. They also were discussed during Applicant's personal subject interview (PSI) with a government investigator on December 17, 2019, and Applicant has admitted the Guideline F SOR allegations. Applicant's financial problems began around 2014 after he started taking ill-advised payday loans to make ends meet, as well as to pay for expenses related to the funeral for his wife's grandfather, while he was working in State B. He regrets taking those loans because their high interest rates, combined with the high cost of rent, gasoline, and other necessities in State B made it difficult for him to make the required loan payments and he eventually defaulted. The resulting delinquencies, alleged at SOR 1.i, 1.j, and 1.k, remain unresolved. Because of the predatory nature of those loans, Applicant thinks some relief may be available to him as a result of civil litigation and corrective legislation in State B; however, he has not yet researched those possible solutions. (Answer; GX 1 – 5; Tr. 29 – 32, 47 – 48)

Since being hired for his current job, Applicant has acted to pay or otherwise resolve his debts as his resources allow. The medical debts alleged at SOR 1.b, 1.c, 1.d, 1.e, and 1.m stemmed from treatment of his wife's conditions. Those debts have been paid. Available information further shows that the SOR 1.m debt is a consolidation of his other medical debts. In September 2020, Applicant resolved through settlement the delinquent auto loan alleged at SOR 1.g. (Answer; AX A; AX C; AX H; Tr. 12, 30 – 31, 39 – 43)

Applicant disputes the delinquent cellphone account alleged at SOR 1.f. He avers that after he was laid off in 2018, he called the carrier to cancel his service and found a much cheaper cellphone plan. Applicant believed he only owed the first carrier about \$300, an amount close to his regular monthly payments. He then began receiving bills for three and four times that amount, which he has been unable to pay, and the SOR 1.f creditor would not take his payment of what he thought he owed. This debt remains unresolved, as does the credit card debt at SOR 1.l, which Applicant thought had been

paid as he holds an account in good standing with the same creditor. (Answer; Tr. 43 – 45, 48 – 49, 73 – 75)

The debt alleged at SOR 1.h is for a utility bill that went unpaid when he moved from State B to State C. He has not yet addressed this debt. The debt at SOR 1.a is for unpaid rent for a residence in State C that he occupied between August 2016 and November 2018. After Applicant was laid off a second time and was working multiple part-time jobs, he thought he had an agreement with the landlord that he could stay in the property and would pay what he could toward the \$1,200 monthly rent required by his lease. However, the lease was managed by a property management company that evicted Applicant and obtained a civil judgment for \$9,754. Applicant disagrees that he owes that much in unpaid rent, arguing that he only owes between \$3,500 and \$4,000. Nonetheless, he has not been able to resolve this debt. (Answer; GX 1; GX 2; Tr. 35 – 39, 46 – 47, 72)

Applicant earns enough from his current job to meet all of his monthly obligations. Most of his spare income is consumed by ongoing medical expenses for him and his wife. Their medical insurance was obtained through Affordable Care Act, and their child is covered under Medicaid. Applicant recently incurred additional medical expenses because of major cardiovascular surgery and recovery therefrom. He is negotiating a consolidation of bills for uncovered copayments and services in order to stay current on his medical bills. Applicant and his wife manage their finances through a worksheet and live well within their means, albeit with a marginal net monthly cash flow. (Tr. 54 – 64, 70 – 71)

When Applicant submitted his e-QIP in 2019, he did not declare any of the debts alleged in the SOR. He denies that he omitted that information with any intent to deceive or mislead the government about his financial problems. During his PSI, Applicant volunteered that he had been evicted in 2018 and that he had experienced financial problems as a result of his two layoffs after living in State B. When the interviewing investigator presented Applicant with credit report information that documented his other debts, Applicant acknowledged most of the debts. He explained that he did not disclose that information in his e-QIP because he did not think that debts that were “charged off” as business losses had to be listed. He also was confused about whether debts more than seven years old had to be listed. His testimony about this issue was consistent with what he told the investigator. All available information probative of his intent at the time he completed the e-QIP shows that he did not intend to provide false or misleading information about his finances. (Answer; GX 1; GX 2; Tr. 50 – 52)

Applicant presented character references from his truck stop employment and from current associates. Additionally, his recent performance evaluations show him to be a solid, reliable employee. (AX E – G)

## 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 accrued significant past-due or delinquent debt that, as of the date of the SOR, was still outstanding. 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; and
- (c) a history of not meeting financial obligations.

Available information also requires consideration of 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Although Applicant's financial problems occurred under circumstances unlikely to recur and do not reflect poorly on his trustworthiness and good judgment, AG ¶ 20(a) does not apply because his financial problems are recent and multiple. As to AG ¶ 20(b), Applicant's financial problems are rooted in circumstances beyond his control; namely, the high cost of living in State B that left predatory payday loans as his only means of meeting basic expenses, and his subsequent loss of income in 2018. Since 2018, Applicant's income has been greatly reduced, yet he has managed to pay his medical debts and settle a delinquent car loan. He manages his finances in a prudent manner and has not incurred any new delinquencies. AG ¶ 20(b) applies, and, to the extent he paid some of his debts as soon as he was able, AG ¶ 20(d) is partially applicable here.

I also have considered the potential application of AG ¶ 20(e). Applicant has a reasonable basis to dispute the amounts of the debts at SOR 1.a and 1.f. Despite his lack of supporting documentation, I found his testimony about those allegations to be both plausible and credible.

The fact that Applicant still has outstanding delinquent debts reasonably poses a security concern. However, assessment of the security significance of a person's financial problems does not end there. These cases turn as much on an assessment of judgment, trustworthiness, and reliability as on the presence of unpaid debts. Applicant did not incur his debts through irresponsible spending or improper conduct. He readily admits that he erred when he obtained the payday loans; however, under the circumstances they seemed like a viable financial option at the time. Since starting his current job, Applicant has paid what he could and he has avoided additional unpaid debts. Despite the presence of his remaining debts, it is unlikely Applicant would act improperly to obtain funds to resolve his financial problems. On balance, available information is sufficient to mitigate the security concerns under this guideline.

## **Personal Conduct**

The security concern under Guideline E is stated, in relevant part, at 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 single SOR allegation under this guideline posits that Applicant intentionally made a false statement about his financial problems by failing to list his past-due or delinquent debts as required by Section 26 of his e-QIP. Because Applicant denied that allegation, the burden remained on the Government to provide sufficient reliable information showing that Applicant made a false statement and intended to do so. (See Directive, E3.1.14) Had such information been produced, it would require application of the disqualifying condition at 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 does not deny that he omitted the information at issue; however, all of the information probative of his intent at the time he completed and submitted his e-QIP shows that his inaccurate responses were the inadvertent product of mistake or misunderstanding. Further, the Government did not present information in support of SOR 2.a that established the controverted fact that resulted from Applicant's denial of that allegation. SOR 2.a is resolved for Applicant.

I also have evaluated this record in the context of the whole-person factors listed at AG ¶ 2(d). Applicant presented information about his character and reliability that further supports a fair and commonsense conclusion in favor of granting his request for 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 – m:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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