



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00019  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: Jacalyn Crecelius, Esq.  
03/25/2022

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant’s evidence in mitigation is insufficient to overcome the security concerns raised by the financial considerations guideline. A good-faith and meaningful track record of payments is lacking. Conversely, he has mitigated the security concerns brought under the guideline for personal conduct. Eligibility for security clearance access is denied.

**Statement of the Case**

On February 20,2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to apply for a security clearance required for a position with a defense contractor. The Department of Defense (DOD), Defense Counterintelligence and Security Agency (DCSA) which could not make the affirmative findings required to grant Applicant a security clearance, issued him a Statement of Reasons (SOR), dated July 12, 2017, detailing security concerns raised by financial considerations (Guideline F) and personal conduct (Guideline E). 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 Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The guidelines are applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AGs are effective on or after June 8, 2017.

Applicant provided an undated answer to the SOR. The date of February 26, 2021 appears next to his signature on the request for hearing form. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2022 for a hearing on February 18, 2022. The hearing was held as scheduled. The Government's six exhibits (GE) 1-6, and Applicant's 11 exhibits (AE A-K) were admitted into evidence without objection. On February 26, 2021, Applicant was not represented by counsel when he submitted his answer to the SOR, with attached exhibits. Because Applicant was unrepresented when he submitted his answer, all of Applicant's pre-hearing and post-hearing exhibits have been modified, reorganized, and remarked to ensure all exhibits are entered into evidence. Applicant's exhibits are now AE A to AE P, and appear in the following order:

AE A	SOR 1.a, judgment satisfied
AE B	SOR 1.b, \$153 payment on 2/25/21
AE C	IRS correspondence related to identify theft complaint dated Jan. 2020
AE D	SOR1.d,1e, payment arrangement dated 2/22/21
AE E	SOR 1.f, \$106 payment on 2/25/21
AE F	Employment screening
AE G	3 References
AE H	Resume
AE I	Family Pictures
AE J	SOR 2.a, 2.b documentation related to expungement of SOR 2.a
AE K	Financial Counseling letter dated 2/26/21 from guidance counselor
AE L	SOR 1.a, 1.f removed from credit report
AE M	SOR 1.b, 1.c closed at zero balance
AE N	SOR 1.c closed for accuracy
AE O	SOR 1.e, credit union investigated fraudulent claim and determined account was accurate
AE P	SOR 1.f, creditors letter explaining limitations statute prevented lawsuit because of age of debt. In February 2021, Applicant authorized regular electronic payments

DOHA received the transcript (Tr.) on March 1, 2022. The record closed the same day.

### **Findings of Fact**

The SOR alleges under financial considerations (Guideline F) that Applicant owes \$32,547 in delinquent debts to six creditors or collection agencies. The listed

debts are for a credit card, two installment car loans, a personal loan, and a dental debt. In his answer to the SOR, he admitted some debts and denied others, with explanations.

The SOR also alleges personal conduct (Guideline E) based on Applicant's arrest in September 2014 and plea of guilty to the charge of possession of drug paraphernalia. (SOR 2.a) SOR 2.b alleges Applicant falsified Section 22 of his February 2020 e-QIP by not disclosing his arrest and charge identified in SOR 2.a. He denied both allegations, contending that he was neither arrested nor found with any paraphernalia in his possession. Applicant contends that he was unaware of what was found. He remembered the officer writing him a ticket. The officer then instructed him to pay the ticket as soon as he could. At the hearing, he recalled the officer writing him two tickets. (Tr. 74) He was then free to go.

Applicant denied SOR 2.b as he did not remember the incident, specifically his arrest, when he signed and certified the April 2020 e-QIP. He was 39 years old when he filled out the e-QIP.

Applicant is 41 years old. He has two sons, 18 and 20 years old; he has a stepson 21 years old, and a stepdaughter 16 years old. He plans to marry in June 2022. He has been employed by a contractor in information technology (IT) since April 2017. Before his current job, he worked at a call center for three months. From November 2016 to February 2017, he was unemployed. In addition, he was unemployed from July 2009 to July 2010. His employment history includes 16 years as a general service specialist. He has never had any problems with his security clearance that he has held since 2007. He participates in regular security briefings on the different aspects of safeguarding classified information. (GE 1 at 12-20, 35; Tr. 14-20)

Applicant advocates his children's participation in activities that increases their perspectives and viewpoints on the world around them. He took them on a vacation to a country in the Caribbean in 2011, and a Latin American country in 2017 for six to 10 days. He also took the entire family to another country in the Caribbean in 2018 or 2019. He recalled spending about \$1,500 on that trip. (GE 1 at 29-30, 48-50)

SOR 1.a – In Applicant's answer to the SOR, he admitted the debt and provided documentation showing the judgment, filed in February 2017, was satisfied in April 2021, after he received the SOR. The account was opened in April 2016 and became delinquent in September 2016. Applicant filed an identity theft complaint with the Internal Revenue Service (IRS) because he surmised that someone had used the card fraudulently. Applicant did not resolve the debt sooner because he did not know about it. He neglected to address the debt. (GE 2 at 2; GE 4 at 13; GE 5; Tr. 21; 48-53; AE A; AE C)

SOR 1.b – This is an installment car loan that Applicant admitted. The account was opened in October 2017 and became delinquent in October 2019, with the last

payment in February 2021. (GE 2 at 3) The car Applicant purchased from this creditor was totaled in an accident. He had GAP insurance on the car. This type of insurance helps pay when the auto loan is more than the depreciated value of the vehicle. Though Applicant used words in his testimony that he was fighting the debt, I find he was really trying to negotiate with 'Silver Rock' GAP insurance company on the amount he would have to pay under the policy. Applicant testified that he had a formal payment agreement with the creditor that began in February 2021. He believed that he could provide documentation of the agreement. No independent proof was provided. His intentions of paying consistently under the agreement were thwarted by his marital plans and other obligations. He claimed he had been making payments on the account until just before the Christmas holidays of 2021, but supplied documentary proof of one \$154 payment in February 2021. After the hearing, Applicant provided an undated statement indicating that the account was closed on April 30, 2019, with a zero balance. The unanswered question is how the charged off account got resolved with a zero balance on April 30, 2019. (GE 4 at 9; Tr. 22-23, 53-59; AE B, M)

SOR 1.c – This account was for a line of credit that was opened in December 2015 and became delinquent in April 2016. Applicant denied he opened this account. He reported this debt to the IRS claiming identity theft. Tax refunds were somehow used to pay for items on his credit report that he did not recognize. No additional information was provided concerning his identity theft claim. In February 2022, Applicant disputed this account with a credit service, but testified he was still making payments on the debt. He supplied undated paperwork indicating the disputed account was closed on July 1, 2016 with a zero balance. (AE M, N) The unanswered question is how did the account close July 2016, with a zero balance, but he was still making payments on the account in 2021. (GE 4 at 11; Tr. 23-24, 59-60)

SOR 1.d – This is an installment car loan that was opened in June 2014 and became delinquent in February 2016. Applicant's documentation shows the account was closed on June 1, 2016. The collection agency actually sold this account to the SOR 1.e creditor. (GE 4 at 13; Tr. 24, 61; AE M)

SOR 1.e – This is an installment car loan account that opened in January 2016 and became delinquent in October 2017. Applicant admitted owing this creditor. He filed a dispute when the creditor refused to fix the car even though it was under warranty. When Applicant fixed the car with his own money, the car developed more mechanical problems. Applicant called the creditor to repossess the car because he was sold a lemon. (Answer to SOR)

Applicant entered into a payment agreement with the SOR 1.e creditor in February 2021. The terms were payments of \$100 a month. Applicant missed payments for four or five months. The February 22, 2021 payment agreement called for a \$200 down payment, seven subsequent payments, with a final payment of \$12,997. He tried two years ago and last year to dispute the debt. Then, Applicant testified that he refused to make payments on the debt because he was treated unfairly. His dispute

documentation shows that his reason for disputing the account was that it was opened fraudulently. The result of the credit union's investigation was: "[credit union] investigated [Applicant's] dispute but the information was verified as accurate. Other information was also updated." (AE O) Applicant registered his dissatisfaction with the result. (GE 4 at 9; Tr. 61-63; AE D, O)

SOR 1.f – This is an account for dental services received in March 2015. The account became delinquent in March 2020. Applicant recalled his dentist did some work but did not finish the job because there was a problem with Applicant's insurance. He had to go to another dentist to get the dental work completed. Applicant was told that he could have this debt removed by applying the statute of limitations. He also paid about \$500 or \$600 on the debt in the summer of 2021. His documentation shows that he made only a \$106 payment to this creditor on February 25, 2021. Also in February 2021, he was advised by letter that this creditor could no longer sue him because of the age of the debt. On February 18, 2021, Applicant then consented on a recorded line to pay this creditor by regular electronic payments. (GE 4 at 11; Tr. 63-66; AE E, P)

When Applicant was unemployed in 2009 and 2016, he relied on his unemployment compensation and his mother to pay his bills. Some bills were not paid regularly. Other than the debts listed in the SOR, Applicant has incurred no new debt. He always pays his taxes. He never had legal problems because of not paying debts. Applicant believes he listed all his debts that he was aware of on his e-QIP. The only time he has had financial problems is when he is not working. Even with employment issues, he has always been trustworthy and would not betray the country. (Tr. 27-33)

SOR 2.a – Applicant denied this allegation because he was never arrested. The paraphernalia found in the car he owned and was driving did not belong to him. The offense was expunged. Even though he received a ticket, the officer had no probable cause to stop him. Besides receiving a ticket for the paraphernalia charge, Applicant received a ticket for having something wrong with his car. He was instructed to pay the ticket as soon as possible and then was free to go. The offense was not in the forefront of his mind because it happened many times before in the area he grew up. That was why he answered "no" to the questions alleged in SOR 2.b. I find that he forgot about the offense when he filled out the e-QIP in February 2020. (Tr. 34-36, 70-75)

Applicant testified that he talked to a credit union adviser and a financial counselor, and will continue to talk with them because he does not want to proceed with the marriage with ongoing financial problems. In a letter dated February 26, 2022, a minister since 1999, with expertise in premarital spiritual guidance, initially talked with Applicant in November 2020 about spiritual guidance in planning for matrimony. In her workbook material, she stresses the importance of sound financial management in all money matters, including establishing a budget and monitoring expenses on a regular basis. Applicant demonstrated a willingness to incorporate these financial issues into the management of his finances. (Tr. 33, 87; AE K)

## **Character Evidence**

Applicant's supervisor at a previous job from 2001 to 2009, and from 2012 to 2016, recalled him as a diligent employee, intelligent, and trustworthy. He always succeeded in handling classified or unclassified projects. (AE G1)

The team manager of Applicant's current employer in the mobility section, has supervised Applicant for the last four years. Based on his security consciousness and trustworthiness, the supervisor has supreme confidence in Applicant's ability to complete tasks in a timely manner. (GE 2)

On February 8, 2022, a former supervisor from 2017 through 2020, indicated that Applicant always excelled in different working environments while making complex information more comprehensible to audiences. (AE G3)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are not inflexible rules of law, should be applied 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**

The security concerns of the guideline for financial considerations are set forth in 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.

An applicant seeking access to classified information must demonstrate that he has good judgment to comply with all security regulations at all times and in all places. Obviously, responsibly managing one's personal life by paying debts in a timely fashion is an important component of good judgment. Generally, an individual's personal debts are not a government concern unless an investigation reveals that the debts have become delinquent because they are not being paid. The adverse information in credit bureau reports can meet the substantial evidence standard to establish controverted facts under the financial considerations guideline. See ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) Then, the burden shifts to applicant to rebut or show that mitigation applies to ultimately find in his favor. The timing of an applicant's payment of his debts is an important factor in his case for mitigation. An applicant who initiates action toward resolution of financial problems only after being placed on notice that his clearance is in jeopardy may not have the judgment to comply with security regulations at all times, even when his personal interest is not put at risk. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26,2017)

Applicant's delinquent debts invoke the application of the following disqualifying conditions under AG ¶19:

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

The listed debts became delinquent between September 2016 and March 2020.

AG ¶20 describes 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; 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 issue.

Though the SOR-listed accounts became delinquent between five and seven years ago, these six debts materialized under circumstances that could recur. The delinquencies and Applicant's conflicting and confusing explanations about their status continue to cast doubt on his current reliability, trustworthiness and judgment. AG ¶ 20(a) applies minimally.

Applicant's unemployment from July 2009 to July 2010 warrants significant mitigation under AG ¶ 20(b) for managing without a job for a year. However, he has had uninterrupted employment for the next eleven years except for a three-month period between November 2016 and February 2017.

Applicant has made several claims about SOR 1.b. One claim is that he was waiting on the outcome of negotiations for his 2022 payment of a portion of the SOR 1.b account through GAP insurance. That claim deviates from his undated documentation that shows the account was actually closed two years earlier in July 2019, with a zero balance. Both of those claims cannot be reconciled with his testimonial position that he was still making payments on the account until just before the Christmas holidays in 2021, though he produced only one documented payment dated February 2021.

Regarding SOR ¶ 1.c, if Applicant was still paying on the delinquent account in 2021, he failed to explain how the account was actually closed in July 2016, with a zero balance. While he agreed to a payment plan with the SOR 1.e creditor in February 2021 he provided no proof of payments under the agreement. Furthermore, an investigation by one of the three major credit unions determined that the debt was accurate. In February 2021, the SOR 1.f creditor advised Applicant that they could no longer sue because of the expiration of the statute of limitations. Yet, Applicant voiced his agreement over a recorded telephone line to a payment plan. No evidence of payments was presented.

Regarding SOR ¶¶ 1.b, 1.c, 1.e, and 1.f, Applicant has decided to rely on the statute of limitations to resolve these debts instead of making a good-faith effort to pay the debts. He even admitted that objective when testifying about SOR ¶ 1.f. In the four



listed cases above, he seriously undermined his credibility by then providing misleading testimonial statements that he had continued to make payments, when in reality, no payments were made after February 2021. The first prong of AG ¶ 20(b) applies, however, the second prong of the condition (acting reasonably under the circumstances) receives negligible attention.

Although Applicant testified that he was in discussions with a financial counselor of a credit union, there is little information explaining what action he took as a result of these discussions. Applicant's minister and spiritual advisor provided an impressive overview of her financial course. However, there is no indication of whether Applicant participated in the course. There is no meaningful evidence that Applicant's debts, except for SOR 1.a are being resolved or under control.

Applicant's payment of the SOR 1.a judgment in April 2021 merits slight mitigation even though he paid the judgment two months after he received the SOR. He receives no mitigation for his inaction toward the remaining four creditors because waiting for the limitations statute to run does not constitute a good-faith way of resolving delinquent debts under security clearance law. The limited mitigation due under AG ¶ 20(d) is based on Applicant's payment of the SOR 1.a judgment.

AG ¶ 20(e) has not been established because Applicant has not presented sufficient evidence to show a reasonable basis to dispute the legitimacy of the past-due debts. The creditors' charge off of the accounts or the fact that the debts no longer appear in credit reports does not mean that they have been satisfactorily resolved. See ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov.13, 2015)

## **Personal Conduct**

The security concerns under the personal conduct guideline 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:

AG ¶ 16. Conditions that could raise a security concern and may be disqualifying include:

(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.

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that individual may not properly safeguard classified or sensitive information

AG ¶ 17. A condition that may mitigate the security concerns is:

(f) the information was unsubstantiated or from a source of questionable reliability.

Based on Applicant's answer to the SOR and his hearing testimony, his recollection of events reveal that he was stopped by the police in in September 2014. The possession of paraphernalia charge was probably a misdemeanor due to Applicant receiving a deferred judgment for the offense. This type of sentence is usually imposed in misdemeanor cases representing the person's first offense. Having weighed all of Applicant's explanations for his denial of the offense, specifically the passage of more than five years, and the lack of substantiation of an arrest, I find for Applicant under SOR 2.a and 2.b.

### **Whole-Person Concept**

I have examined the evidence under the specific guideline 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.

The DOHA Appeal Board, has noted under the financial considerations guideline that an applicant should demonstrate a good-faith and "meaningful track

record” of payments that shows overall debt reduction. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) While an applicant is not required to be free of all debt, he should demonstrate he has a plan and is dedicating unequivocal action to implement the plan. Waiting for the statute of limitations to expire so the debts are legally unenforceable would be a legal course of action, but it is not considered a good-faith course of action to resolve debts under AG ¶ 20(d). Considering the evidence as a whole, the lack of a track record of payments on the delinquent accounts renders Applicant’s sparse evidence in mitigation insufficient to overcome the ongoing security concerns that emanate from the guideline for financial considerations. Applicant has mitigated the personal conduct guideline.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge