



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 21-01173
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/22/2022

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his unresolved delinquent debts. His request for a clearance is denied.

Statement of the Case

On January 20, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant's request for a security clearance. An affirmative determination is required by Security Executive Agent

Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2,

On August 7, 2021, DCSA 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 is 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. I scheduled a hearing to be held on March 31, 2022, via online video teleconferencing. The parties appeared as scheduled, and Applicant testified in his own behalf. Department Counsel proffered Government Exhibits (GX) 1 – 3. Additionally, a copy of a discovery letter dated September 3, 2021, was included in the record as Hearing Exhibit (HX) 1. I received a transcript of the hearing (Tr.) on April 8, 2022.

Applicant testified but did not produce any documents at hearing. At the end of the hearing, as discussed during the hearing, I held the record open to receive documentary information in support of his case. (Tr. 79) He timely submitted Applicant Exhibit (AX) A, a two-page document pertaining to one of the debts alleged in the SOR. The record closed on April 11, 2022, when I received Department Counsel's waiver of objection to the admissibility of AX A.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$42,929 for 11 delinquent or past-due debts (SOR 1.a – 1.k). In his Answer, Applicant admitted with explanations allegations at SOR 1.b, 1.c, 1.e, and 1.i – 1.k. He denied with explanations the remaining SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is 48 years old and is being sponsored for a security clearance by a defense contractor, which has hired him contingent on his ability to obtain a security clearance. He served on active duty in the United States Air Force between July 1992 and September 2017, when he retired. His last assignment in the military was overseas, and he remained there as a civilian employee at a U.S. military base. While in the military, Applicant held a security clearance, which has since lapsed. (GX 1; Tr. 22)

Applicant and his wife have been married since March 2013. He previously was married between 1992 and 2002, and between January 2003 and May 2011. Both prior marriages ended by divorce. He has six children, ages 28, 25, 20, 18, 6, and 5, and a 21-year-old stepchild. His two youngest children and the 21-year-old live with Applicant and his wife, and he pays \$850 in monthly court-ordered child support for the 18-year-old who

lives with that child's mother; however, he testified that his child support obligation will end now that the child has reached the age of majority. He has not yet petitioned the court to terminate the child support order. Applicant has always been current on his child-support payments as it has always been deducted from his active duty pay or from his retired pay each month. (GX 1; GX 3; Tr. 29 – 32)

Applicant's current wife is a foreign national whom he met and married while stationed overseas. His stepchild, also a foreign national, is his wife's daughter from a previous relationship. When Applicant retired from the military, he and his family had planned to remain overseas where he was working on a U.S. military installation. However, during a 2017 visit to see Applicant's elderly parents, it became apparent that he should move back to the United States to care for them. His mother died in 2021. His father is in his late seventies and requires the level of care and attention one might expect for someone that age. Fortunately, his father is financially self-sufficient and has medical insurance that covers most of his needs. (GX 1; GX 3; Tr. 32 – 33)

Applicant and his family moved to the United States in June 2017. He did not yet have a job and was unemployed until December 2017, when he was hired in a managerial position for a national department store chain at an annual salary of \$50,000. This salary was sufficient to support his family; however, he was soon required to travel as part of his duties and found that he actually was losing income because of travel-related expenses. A subsequent reorganization caused Applicant to leave that job in late 2019 and take his current managerial position with a nationally-known retail company. His net monthly income is about \$3,470. He also receives monthly military retired pay of about \$580 after child support is deducted (this should increase to about \$1,430 when that obligation ends), and he receives about \$1,740 each month in disability benefits from the Department of Veterans Affairs (VA). Additionally, Applicant's wife started working full time in October 2021 and brings home an additional \$1,000 each month. (GX 3; Tr. 22 – 29, 66 – 67)

In his e-QIP, Applicant disclosed the debts at SOR 1.a, 1.f, and 1.k. The February 2021 credit report introduced by Department Counsel documents all of the debts alleged in the SOR. Those debts were discussed with and confirmed by Applicant during a personal subject interview (PSI) with a government investigator on February 27, 2021. During the PSI, Applicant stated his intentions to contact his creditors and repay or otherwise resolve his debts. Through AX A, he established that in November 2021, he resolved the debt at SOR 1.c through a monthly payment plan he initiated after he received the SOR. Although he also claims he also paid the debt at SOR 1.j, a delinquent utility bill from his residence overseas, he did not provide any information to document that payment. The remaining debts alleged have not yet been satisfied and any efforts by Applicant to communicate with his creditors were initiated after he received the SOR six months after his PSI. (Answer; GX 1 – 3; AX A; Tr. 41 – 44, 51 – 52)

Applicant disputed some of the debts alleged. Available information shows that the debt at SOR 1.a is for the remainder after resale of a vehicle, purchased in 2018, and

twice repossessed in 2019. The first repossession occurred when he fell behind on his payments in February 2019. After bringing the loan current, he again fell behind; however, he claimed that he stopped making full payments after the terms of the loan were changed unexpectedly, increasing his payment from \$661 to \$800. The dealer/lender increased the monthly payment to cover mandatory car insurance after Applicant let his policy lapse. Applicant argued that he did not let the policy lapse and that he should have been told about the change in the terms of the loan. He last contacted that creditor more than a year before the hearing and he has not made any payments or other arrangements to resolve the debt. He also did not support his claims regarding the car insurance and change of payment terms despite having additional time after the hearing. (Answer; GX 1 – 3; Tr. 34 – 39)

In response to the SOR, Applicant claimed he was making payments to satisfy the delinquent cellphone account debt alleged at SOR 1.b. He did not corroborate that claim at or after his hearing. He testified that the debt is for equipment he did not return when he changed service providers. The delinquent cable, phone, and internet provider debt at SOR 1.e also resulted from his failure to return equipment when he changed service providers. Applicant has not paid either debt, and he did not show that he has returned any of the equipment or that he is communicating with either creditor to resolve these debts. (Answer; GX 2; GX 3; Tr. 39 – 41, 45 – 46)

Applicant has claimed that the delinquent credit card debt alleged at SOR 1.d is the result of someone misusing his card. When asked about this account during his PSI, he stated that he would not pay any charges with which he disagreed, which he estimates total about \$1,100 of the \$1,813 listed in the credit report obtained by investigators in February 2021. Applicant did not present any information to support this dispute or that shows he has made any payments on this debt. (Answer; GX 2; GX 3; Tr. 44 – 45)

Applicant testified that he thinks the debt at SOR 1.f was resolved when he paid the debt at SOR 1.c. The basis for his claim is that the creditor listed in SOR 1.f is the same as SOR 1.c; however, the creditor listed is a collection agency that likely collects for a variety of businesses. Applicant did not corroborate his claim that he has resolved the SOR 1.f debt, which is for a past-due furniture rental account. He also disputes the debt, claiming the furniture was defective and the creditor did not make required repairs. He did not produce any information to corroborate this claim. (Answer; GX 2; GX 3; Tr. 47 – 49)

As to the SOR 1.g and 1.h debts being collected by the same creditor, Applicant does not know who the creditor is or what the debts are for. The debts are documented in the February 2021 credit report, and he told the investigator during his PSI that he would contact the creditor to determine the accuracy of those entries. Applicant has not provided any further information about those efforts and the debts remain unresolved. (Answer; GX 2; GX 3; Tr. 49 – 50)

Applicant disputes the debt at SOR 1.i as a bill that should have been covered by his medical insurance. However, it remains unpaid and he did not provide information in support of his dispute. (Answer; GX 2; GX 3; Tr. 51)

The debt at SOR 1.k is the remainder after resale of a car, purchased in 2017, that was repossessed in April 2019. Not long after he bought the car, he let his niece use it with the understanding that she would make the required monthly payments. In early 2019, he became aware that the car loan, which was in his name only, was past due by as much as \$1,200. Applicant paid that arrearage to retrieve the car, but his niece did not make any more loan payments and the car was repossessed when the loan was another \$6,000 in arrears. Applicant has not acted to resolve this debt. (Answer; GX 1 – 3; Tr. 52 – 55)

Applicant attributes his financial difficulties to his brief period of unemployment in 2017, to the reduction in income he experienced when he retired, to uneven income in the United States, to unplanned legal expenses, and to having to pay for his mother's funeral. His wife and stepdaughter entered the United States on tourist visas because they did not initially plan to remain. Thereafter, they had to apply for permanent resident alien (PRA) status. Between 2017 and 2021, he paid almost \$7,000 for legal services needed to obtain their "green cards." That process was successfully completed in late 2021; however, he cited those expenses as factors that either have hindered his ability to resolve his past-due debts or caused him to fall behind on his various obligations after 2017. When his mother died last year, he paid about \$7,000 for her funeral. (GX 1; GX 3; Tr. 22 – 29, 33 – 34, 78)

Applicant lives paycheck to paycheck despite having about \$400 remaining each month after regular expenses. He did not provide any detailed information, such as a monthly budget, about the way he and his wife manage their finances. He has not sought any assistance from a financial professional or a credit counseling firm to help him resolve his debts. (Tr. 59 – 64)

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 met its burden of producing sufficient, reliable information to support all of the SOR allegations that Applicant accrued significant past due or delinquent debt that, with one exception, is 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.

After a thorough review of this record, I conclude that none of these mitigating conditions can be applied. In response to the Government's *prima facie* case for disqualification, Applicant showed that only the debt at SOR 1.c has been addressed. All of the remaining debts listed in the SOR are still unresolved. Accordingly, his financial problems are recent and continuing. It may be that Applicant's financial problems arose through the unexpected circumstance of having to return to the United States to care for his parents; however, the record does not support a conclusion that he acted responsibly given those circumstances. His debts remained unaddressed even after he was interviewed by a government investigator in early 2021. It was not until he received the SOR that he took any action at all by repaying the SOR 1.c debt. Despite having additional time after his hearing, he did not present information to support his claims that he is repaying the debt at SOR 1.b or that he repaid the debt at SOR 1.j. Nor did he support his disputes with various other creditors. As to his two largest debts, Applicant has not

taken any measureable action in the past year that would indicate he will be able to pay or otherwise resolve them.

Applicant has not sought any professional financial assistance in addressing his financial problems. Further, he did not present any useful or encouraging information that shows he manages his personal finances in a way that would help him avoid such financial problems in the future. On balance, I conclude Applicant has not met his burden of persuasion and that he has not mitigated the security concerns established by the Government's information. I also have considered the potential application of AG ¶ 20(e). The record evidence as a whole presents significant remaining doubts about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.d – 1.k:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge