



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03460
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel O'Reilley, Esq., Department Counsel  
For Applicant: *Pro se*

05/15/2022

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern generated by his delinquent debts. Clearance is denied.

**Statement of the Case**

On March 12, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On March 25, 2021, Applicant answered the SOR, and requested a decision based on the written record instead of a hearing. The answer contained four attachments. Applicant did not admit or deny each specific SOR allegation.

After answering the SOR, Applicant, on May 10, 2021, submitted a supplemental answer, admitting all of the allegations except subparagraph 1.o, and requested a hearing instead of a decision based on the written record. On February 11, 2022, I was assigned the case. On March 18, 2022, DOHA issued a notice of video teleconference hearing, scheduling it for April 20, 2022.

The hearing was held as scheduled. I received four Government exhibits, marked and identified as Government Exhibit (GE) 1 through GE 4, one exhibit of Applicant's marked and identified as Applicant's Exhibit (AE) A, and I considered the testimony of Applicant. At Applicant's request, I left the record open at the close of the hearing until May 18, 2022 to allow him to submit additional exhibits. Within the allotted time, Applicant submitted three additional exhibits, marked and incorporated into the record as AE B through AE D. I did not extend the record any further. The transcript (Tr.) was received on April 28, 2022.

### **Findings of Fact**

Applicant is a 55-year old married man with two adult children and one adult stepchild. (Tr. 18) A previous marriage ended in divorce. Applicant is a veteran of the U.S. Navy, serving from 1994 to 2010. He retired honorably. (GE 1 at 24) Applicant works for a contractor as a management analyst. (Tr. 19) He is tasked with providing administrative support for senior government employees, military members, and other government contractors. (Tr. 19) He has been employed in this line of work since retiring from the Navy.

After retiring from the Navy, Applicant matriculated to college and earned a bachelor's degree in 2014. (GE 1 at 14) He has held a security clearance for 32 years. (Tr. 21)

Applicant is highly respected on the job. According to his supervisor, Applicant demonstrates "a keen sense of security awareness, not only ensuring the proper safeguarding of information by his [sic] self, but by raising the awareness of all in [their] division." (Answer at 13)

Since 2009, Applicant has incurred approximately \$25,000 of delinquent federal and state income taxes, and approximately \$28,000 of delinquent consumer debts. The delinquent federal income taxes stem from tax years 2009 to 2019, and are alleged in subparagraphs 1.a through 1.h. Subparagraph 1.i sets forth Applicant's failure to file his state income tax returns. The remainder of the allegations concern Applicant's consumer debts.

Applicant contends his income tax problems related to problems managing his side business. Because he "wasn't business-smart at all," he hired his brother to file his income tax returns. (Tr. 34) Initially, "everything was fine." (Tr. 35) Then, some years after starting the business the IRS audited his finances. Applicant did not save many of his receipts when he purchased inventory, and lost others when he relocated in 2016. (Tr. 35; GE 1 at 11)

Applicant also attributes his delinquent debts to the loss of income that occurred when his GI bill benefits ceased in 2014, which coincided with health issues his wife experienced that compelled her to stop working. (GE 2 at 7; Tr. 26) At or about this time, his son was incarcerated, leaving Applicant and Applicant's wife to care for the grandson, and increasing household expenses. (Tr. 26) Strapped for cash, Applicant had to prioritize which debt to pay and which debt to not pay. (GE 2 at 7) Applicant acknowledges that some his financial problems were due to irresponsible spending. (GE 2 at 3) Specifically, he "took on probably more debt than [he] should have[.], . . . [and] didn't make smart decisions money-wise." (Tr. 32)

In 2018, Applicant contacted the IRS and negotiated a payment plan to satisfy the federal tax delinquencies alleged in subparagraphs 1.a through 1.h. Between February 2018 and April 2022, he made 19 payments, totaling approximately \$3,540. (AE A and AE B) Approximately \$23,000 remains outstanding.

Applicant has yet to file his state tax returns from 2012 to 2018, as alleged in subparagraph 1.i. (Tr. 45) However, he has been making monthly payments ranging between \$80 and \$137 since February 2021 through a payment plan. (AE C; Tr. 46) He contends that he began making payments before February 2021, but was unable to substantiate this contention before the close of the record. The amount owed is unknown from the record. Applicant was making payments under a previous payment plan in 2013, but "let it lapse" in 2016 (Tr. 47) Although he is making payments towards the satisfaction of his state tax debts, he has yet to file his state income tax returns. (Tr. 46)

The debt alleged in subparagraph 1.j, totaling \$17,948, is the deficiency from a car that the lender repossessed. (Tr. 25, 50) The car originally belonged to Applicant's son. When his son was incarcerated in 2016, Applicant assumed liability for payment of the car note, but was unable to make them. The repossession was voluntary. (Tr. 47) The debt remains outstanding, and Applicant has no plans to address it until he resolves other debts. (GE 2 at 8)

The debt alleged in subparagraph 1.k is owed to another car lender. Applicant opened this account in 2010. (GE 2 at 10) The account became delinquent in 2017 and was charged off later that year in August 2017. (GE 4 at 11) In April 2019, Applicant contacted the creditor and negotiated a payment plan. (Answer at 4) He has been making monthly payments, ranging from \$96 to \$507 since then. (Answer at 4) The current balance is unknown from the record.

The debt alleged in subparagraph 1.l, totaling \$604, constitutes a delinquent maintenance fee from a timeshare property that Applicant purchased in 2017. (Supplemental Answer at 3) He fell behind on these fees in 2019. He contends that he satisfied the delinquent fee and is trying to sell the property to no avail. (Tr. 28) He stopped making payments in January 2022, anticipating that the company he had hired to get him out of this time share would successfully obtain his release from the time-share obligations. (Tr. 28) If the efforts at getting out of the time-share responsibilities fail, Applicant "may go back to making payments." (Tr. 29)

The debt alleged in subparagraph 1.m, totaling \$421, is a delinquent credit card that Applicant opened to pay for car repairs. (Tr. 30; Supplemental Answer at 6) He will begin making payments to satisfy it after he pays off his other debts. (Tr. 31)

The debt alleged in subparagraph 1.n, totaling \$229, is a cable television service bill. Applicant disputed this bill, contending that the dates that the service allegedly was not paid do not correspond to the dates when he lived at the residence. (Tr. 31; GE 4 at 12) He provided no proof substantiating the basis of his dispute.

The debt alleged in subparagraph 1.o, totaling \$186, is owed to an unidentified medical creditor. Applicant denies this allegation contending that he was unaware of this debt before the issuance of the SOR. (Answer at 1)

Applicant earns \$62,000 annually. (Tr. 38) His salary has increased by approximately \$15,000 over the past two years. (Tr. 32) After a four-year-hiatus, Applicant's wife has returned to work. She earns \$23,000 annually, and she helps pay the bills. (Tr. 51) Applicant contends that this additional income has enabled him to make more steady debt payments. (Tr. 52) Applicant did not submit a budget into evidence.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. 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 the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 ¶ 1(d) requires that "[a]ny 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. 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 to obtain a favorable security decision.

## **Analysis**

### **Guideline F: Financial Considerations**

Under this concern, “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.” (AG ¶ 18)

Although SOR pleadings do not need to be drafted with the specificity of criminal complaints, they must at minimum be specific enough to provide the applicant an ability to prepare a defense. (ISCR Case No. 02-17219 (App. Bd. Jan. 2005) Subparagraph 1.o alleges a debt, but does not identify the name of the creditor, and as such, does not cross this minimum threshold. Consequently, in light of Applicant’s denial, I resolve subparagraph 1.o in his favor.

The remaining debts trigger the application of AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations, and AG ¶ 19(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.”

Although Applicant has been making debt payments, the majority of his delinquencies remain outstanding. Consequently, AG ¶ 20(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,” does not apply.

Applicant’s financial problems were caused, in part, by the loss of family income that occurred when chronic illness compelled his wife, with whom he shared bill-paying responsibilities, to quit working for several years. Moreover, Applicant’s financial problems were exacerbated when he was left to care for his grandson after his son was incarcerated. Conversely, Applicant readily acknowledges that poor financial decisions also contributed to his financial problems. Particularly egregious was his decision to purchase a time-share property in 2017 when he had an outstanding, multi-year federal income tax delinquency. Under these circumstances, circumstances beyond Applicant’s control were not the principal cause of his financial problems. Under these circumstances, AG ¶ 20(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,” is only partially applicable.

Applicant has contacted some of his creditors and arranged plans to make payments towards the satisfaction of his debts. However, payments have not been consistent, and the amount owed on his debts, particularly his income tax debts, remains largely outstanding. In addition, Applicant has previously started payment plans and failed to complete them. Consequently, AG ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies to the efforts thus far to begin satisfying his consumer debts, and AG ¶ 20(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,” applies with respect to his nascent efforts to pay his tax debts, but AG ¶ 20(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,” does not apply.

Applicant’s dispute of his cable television bill, as set forth in subparagraph 1.n, was not supported by any substantiating evidence. AG ¶ 20(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,” does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Applicant has made some progress towards debt satisfaction. However, given the nature of some of these delinquencies, the length of time that they have been delinquent, and Applicant’s lack of success in adhering to previous payment plans, I conclude that it is too soon to conclude that Applicant has mitigated the security concerns. In reaching this conclusion, I was particularly troubled that he purchased a time-share property when he owed delinquent federal and state income tax debts.

## 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 – 1.n:	Against Applicant
Subparagraph 1.	For Applicant

## Conclusion

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

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Marc E. Curry  
Administrative Judge