



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03077
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2022

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant responsibly resolved financial issues during two difficult periods over the past 25 years. He neither falsified material facts to the Government nor demonstrated untrustworthiness or questionable judgment concerning his Chapter 13 bankruptcy. Potential security concerns were fully mitigated. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

**History of Case**

On March 29, 2018, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to apply for his initial security clearance. On February 4, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations), and E (Personal Conduct). The action was taken 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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), which came into effect on June 8, 2017.

Applicant submitted his written Answer to the SOR on March 23, 2020. He admitted some of the SOR allegations, denied the others, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 28, 2020. The scheduling of the hearing was delayed for a significant amount of time due to communication technology limitations and travel restrictions based on the COVID-19 pandemic. DOHA issued a Notice of Microsoft Teams Video Teleconference Hearing on March 11, 2022, setting the hearing for March 29, 2022. On that date, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant testified, and offered Applicant Exhibits (AE) A through E into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 13, 2022.

### **Findings of Fact**

Applicant is 53 years old. He is married for the second time. He has one adult child from his first marriage and two adult stepchildren. He earned a high school diploma in 1987. He began his current employment with a major aerospace company in June 2009, having previously worked there from 1996 to 2002. He is applying for his first national security eligibility so he can support his employer's ongoing and prospective DoD contracts. He never served in the military or held a Federal civil service position. (GE 1; GE 2; Tr. 8-9, 34-35, 46-47.)

As alleged in SOR ¶ 1.b, Applicant and his first wife filed for Chapter 7 bankruptcy relief during October 1997. The bankruptcy court discharged their eligible debts in February 1998. Applicant testified that their marriage was contentious and he "was not responsible with [his] money at all back then." (GE 3; Tr. 36.)

Applicant's divorce from his first wife was finalized in May 2004 and he married his current wife in July 2005. They encountered no financial difficulties during their first eight years of marriage, and purchased their first home in February 2012. In 2013 Applicant suffered some significant medical issues, causing him to miss several months of work. He also incurred increasing expenses of three teenage sons' involvement in sports, and had reduced overtime availability at work when he returned. He and his wife borrowed funds to try to remain solvent, but eventually fell behind on some debts including a four-or-five-month delinquency on their home mortgage. Their lender filed a foreclosure action at that point. They wanted to protect their home, in which they had already accrued substantial equity, and sought legal advice. Their attorney advised and assisted them to file for Chapter 13 bankruptcy protection, which they did in April 2014 as alleged in SOR ¶ 1.b. (GE 1; GE 2; GE 3; Tr. 28-30, 37-40, 52-53.)

Applicant's medical troubles continued and he suffered a six-month period in which he could not work, causing problems with fully making the initial court-ordered monthly bankruptcy payments, of which he kept his attorney apprised. The attorney apparently filed a request to lower those payments to an affordable level. During the same period, his father-in-law suffered a debilitating disease. The family decided that Applicant's in-laws would sell their home in another state and move in with Applicant and his wife so

that her father could continue to be cared for at home. This arrangement generated significant funds that were contributed to Applicant and his wife to repay or bring current all of the debts involved in their bankruptcy. They then petitioned to have the bankruptcy dismissed by the court in January 2017, and began resolving each underlying debt with the respective creditor in a methodical and reasonable manner. (GE 1; GE 2; Tr. 28-30, 37-40, 52-53.)

The SOR also alleged five specific delinquent consumer debts, totaling \$4,152.00, that remained on Applicant's credit reports in early 2020. These accounts were opened between 2010 and 2014 and were among the last of the bankruptcy debts resolved by Applicant and his wife, who is the primary manager of their finances. The largest of these debts (SOR ¶ 1.c) was a secured \$3,183.00 loan for a vacuum cleaner that she purchased. This debt was fully repaid in August 2019. The other four debts (SOR ¶¶ 1.d-1.g), totaling \$969.00, were also repaid in full between mid-2017 and early-2020. (GE 2, GEs 4-7; AE A; Tr. 40-42.)

During 2012 and 2013, while Applicant was struggling financially, he had too little Federal income tax withheld from his paychecks and bonuses, and incurred some additional tax liability for IRA withdrawals. As a result, he incurred \$14,584.00 in delinquent tax debt, as alleged in SOR ¶ 1.h. He filed proper returns documenting these shortfalls and made contemporaneous arrangements with the IRS to increase his withholdings, pay \$300 per month, and forfeit subsequent refunds to repay this debt. After three or four years of compliance with this agreement, he completed full repayment of this debt. He has not experienced any other income tax issues. (GE 1; GE 2; AE B; Tr. 22, 27, 34, 44-46.)

SOR ¶ 1.i alleges a former \$3,156.00 child support arrearage owed to Applicant's state's Department of Social and Health Services. After the separation preceding their 2004 divorce, Applicant's then-four-year-old son lived with him but his former wife provided no child support. During his senior year of high school, that son declared that he would no longer follow Applicant's rules and was going to go live with his mother so he could just party and play video games. The arrangement among them provided that Applicant would pay no child support to his former wife, but she was on welfare and claimed their son as a dependent to increase her monthly payments. The state paid her the equivalent of child support payments and charged Applicant for them because he was a solvent parent. This continued until the son graduated from high school at age 19, but Applicant was not notified of the debt until he had accumulated the alleged arrearage. He made regular payments to the state for a couple of years until he had paid all support claimed by the state. Due to a clerical error, the state failed to report this fact to the credit bureaus so the debt remained on the credit report. Applicant provided a letter from the state agency documenting his completion of payments in July 2014 as an attachment to his Answer. (Tr. 15-17, 25, 46-48.)

Applicant's current financial situation is good. His wife works almost full time as a substitute secretary for two local school districts, his father-in-law passed away, and his mother-in-law is living in a nursing home that is fully paid for by her ex-husband's

insurance as a retired postal employee. They sold their former home and put about \$80,000.00 of equity into a down payment for the home they currently own and live in. They have a stable budget and sufficient income that has allowed them to remain current on all financial obligations while making regular contributions to retirement savings. (GE 6; GE 7; Tr. 30-34, 39-40, 43-44, 53-54.)

SOR ¶ 2.a alleges that Applicant falsified material facts in his March 2018 e-QIP response to the Section 26 bankruptcy question by disclosing his Chapter 13 filing but saying that it was dismissed at his request because he “had the money to catch up the house up to current and payoff [sic] the cars involved.” This was generally consistent with what Applicant told the investigator during his April 2019 OPM enhanced subject interview. The SOR alleges that the statement was false because it differed from his “representation to the Bankruptcy Court on December 2014, 2016, when [he] moved to dismiss the case because he could ‘no longer afford to make [his] Chapter 13 Plan Payments.’” On that date, Applicant’s attorney filed a motion seeking voluntary dismissal of the case that stated, “[Applicant’s] overtime hours have been decreased and is [sic] suffering from an unexpected illness and they can no longer make their Chapter 13 Plan Payments.” On January 10, 2017, the bankruptcy judge granted Applicant’s motion to voluntarily dismiss the Chapter 13 case, “for Other Cause.” (GE 2.)

Applicant agreed that he had been encountering difficulties making the full payments, and so advised his attorney, before his in-laws moved in to live with them and donated funds to him and his wife for use resolving their Chapter 13 debts. He neither signed, nor was aware of, the specifics of his attorney’s December 2016 formal motion to dismiss the case. He testified that both reasons played into their determination to use the available funds to resolve the debts rather than continuing to make payments under court supervision, despite the fact that he would lose the benefit of paying a significantly reduced total amount to resolve the debts through bankruptcy. When they obtained the resources to meet their obligations to fully repay their creditors, they decided to honorably do so. I find no evidence that Applicant attempted to conceal any of these material facts, which he has freely disclosed and discussed throughout this process. (GE 1; GE 2; GE 3; Tr. 29-30, 32, 48-51, 58-60.)

After increasing the Federal income tax withholdings from his paycheck, as discussed above with respect to SOR ¶ 1.h, Applicant and his wife received refunds from the IRS for tax years 2014 and 2015. Their then-active Chapter 13 bankruptcy plan called for them to turn over any refunds in excess of \$1,500 to the trustee for use in making plan payments. Their attorney did not make them aware of this requirement until the bankruptcy trustee received notice of the refunds and petitioned the court to recover the funds. On November 18, 2016, the court entered an order implementing an agreement between the trustee and Applicant’s attorney to increase their monthly plan payments in order to account for the refund recoupment. This situation was not an irresponsible or surreptitious attempt to unlawfully retain the income tax refunds, but rather a misunderstanding that was promptly resolved through a court-sanctioned mutual agreement. (GE 3; Tr. 21-22, 49-51.)

Three current and former supervisors, with extensive experience in classified programs, wrote letters on his behalf. They uniformly praised his character, diligence, trustworthiness, dedication, loyalty, and attention to compliance with all applicable security protocols. (AE B; AE C; AE D.)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions. 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 AG ¶ 2 describing the adjudicative process.

The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 2(c), 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, pertinent, and reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for national security eligibility 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for national security eligibility seeks to enter into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of protected information.

Section 7 of EO 10865 provides, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## Analysis

### Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant and his first wife received bankruptcy relief under Chapter 7 in February 1998. When he and his second wife encountered financial hardships in 2012 and 2013 that they could not resolve, they consulted an attorney and were advised to file for Chapter 13 supervision of a court-approved repayment plan. They followed this plan from 2014 until January 2017, when their bankruptcy was dismissed at their request because they had obtained the means to repay their creditors. A few relatively minor debts that were still pending when Applicant filed his e-QIP had been resolved by the time the SOR was issued. Nevertheless, these facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

- (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, or 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.

Applicant's two temporary periods of delinquent debt over the past twenty-five years were caused by employment and medical conditions beyond his control and each was responsibly addressed through appropriate bankruptcy proceedings undertaken on advice of his legal counsel. In early 1998 his debts were fully discharged under Chapter 7. More than 16 years later, he and his second wife filed for protection under a court-approved Chapter 13 plan, which they followed until late 2016 when their changed family situation generated sufficient resources for them to voluntarily dismiss that plan and fully resolve the debts involved. That process took several years but was fully completed by the time Applicant's SOR was issued. This responsible conduct under unique circumstances eliminates the prima facie concerns about his reliability, trustworthiness, and judgment. He offered substantial evidence to establish that such problems are not ongoing, and are unlikely recur. Applicant sufficiently established mitigation of the formerly valid concerns under AG ¶¶ 20(a) and 20(b).

Applicant obtained financial counseling from his bankruptcy attorneys both times he encountered issues he could not resolve on his own, and established his family's solvency to meet financial obligations going forward. He demonstrated that these issues, in aggregate, have been brought under control, through good-faith efforts that led to resolution of all of his formerly delinquent accounts. Accordingly, he established additional mitigation of the security concerns under the provisions of AG ¶¶ 20(c) and 20(d).

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concerns pertaining to personal conduct:

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 the national security investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying under the facts alleged in the SOR:

(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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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 the individual may not properly safeguard classified or sensitive information.

The SOR alleged that Applicant intentionally falsified facts in his e-QIP about the reason for seeking the voluntary dismissal of his Chapter 13 plan, which the court-granted in January 2017. I find this allegation to be unsubstantiated and, in fact, contradicted by compelling evidence. While he disclosed the most compelling and final reason he and his wife decided to forego bankruptcy relief and fully repay all of the involved creditors, his attorney's court filing only cited a subordinate, but apparently sufficient (if not boilerplate) justification for the motion. I am convinced that Applicant was unaware of this discrepancy and had no intention to conceal or deceive the Government about the facts surrounding this bankruptcy. Accordingly, possible disqualifying concerns under AG ¶ 16(a) were not established.

Similarly, potentially disqualifying concerns under AG ¶ 16(d) relating to Applicant's 2014 and 2015 income tax refunds were dispelled by the record evidence. Legal procedures were followed by the bankruptcy trustee and Applicant's attorney to bring these refunds to the court's attention and reach an agreement to incorporate their payment into the plan once the issue came to their attention. Applicant was unaware of the provision requiring payment of refunds exceeding \$1,500 into the plan until this arose, and agreed to the mutually negotiated resolution. These facts are not probative of any questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that Applicant may not properly safeguard classified or sensitive information.

Since the record evidence does not establish or support potentially disqualifying security concerns under this guideline, no discussion of potential mitigating conditions under AG ¶ 17 is warranted, beyond those concepts addressed in the following whole-person analysis.



## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who fully disclosed and consistently demonstrated accountability for his two unrelated periods of financial hardship over the past 25 years. He convincingly demonstrated his intention to remain financially stable after responsibly resolving the problems generated by his unavoidable medical and related employment issues around ten years ago.

This is not a matter of substituting a credibility assessment for the facts of this case. Applicant has been honest and forthright throughout this process, which is important to establishing and maintaining national security eligibility. That integrity fortifies other strong evidence of his trustworthiness, responsibility, and willingness to comply with rules and regulations.

The potential for pressure, exploitation, or duress is minimal since Applicant has informed his supervisors, family, and friends about his previous financial issues and satisfactorily resolved them. Recurrence of delinquent indebtedness is not likely.

Overall, the evidence has eliminated any doubt as to Applicant's eligibility and suitability for a security clearance. He successfully met his burden to disprove or mitigate security concerns arising under the Financial Considerations and Personal Conduct guidelines.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge