



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 21-00711
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2022

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial problems. His request for a clearance is denied.

Statement of the Case

On February 6, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew 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 April 30, 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 June 9, 2022, and I convened a hearing via online video teleconferencing on August 16, 2022. The parties appeared as scheduled, and Applicant testified in his own behalf. Department Counsel proffered Government Exhibits (GX) 1 – 4. Additionally, an *Index of Government Exhibits*, and a copy of a discovery letter dated June 28, 2021, were included in the record as Hearing Exhibits (HX) 1 and 2, respectively. Applicant proffered Applicant Exhibits (AX) A – F. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on August 25, 2022.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$51,649 for six delinquent or past-due debts (SOR 1.a – 1.f). In his Answer, Applicant admitted with explanations all of the SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 47-year-old employee of a large defense contractor for whom he has worked since May 2001. Prior to that, he worked for 16 months at a large U.S. military base, possibly as a federal employee. It was during that employment that he was first granted a security clearance. (GX 1; Tr. 15, 46 – 47)

Applicant and his wife have been married since February 2007. They have three children together, ages 7, 13, and 14. Applicant was previously married between March 2001 and November 2006. That marriage produced one child. Applicant paid his ex-wife \$800 each month for child support until their child turned 18 in October 2021. (GX 1; Tr. 15, 60 – 61)

The debts alleged in the SOR are documented by the Government's exhibits. In response to the SOR, Applicant did not contest any of the allegations and stated his intention to resolve all of his debts by the end of 2021. At hearing, he averred that he has paid or otherwise resolved all but one (SOR 1.a) of the debts alleged. (Answer; AX A; Tr. 35 – 43)

Available information shows that the debts at issue became delinquent in 2019 and 2020. Applicant attributes his financial problems to the loss of his wife's income after

she was injured in a car accident in late 2018 and stopped working full time. He further claims that in 2020, when their children had to stay home from school because of the Covid-19 pandemic, his wife could not work, further hindering their ability to pay their debts. (Answer; GX 1 – 4; AX A; Tr. 35 – 43, 35, 40, 41, 80, 86 – 88)

Applicant has acknowledged that he already was carrying high balances on his credit cards at the time of his wife's accident. His annual income at the time was about \$96,000. Her annual income was between \$15,000 and \$20,000. Since 2001, he has been continually employed with health insurance for him and his family, and he now earns about \$121,000 annually. His wife also could not work for an unspecified time starting in early 2020 because their children had to attend school virtually. The children have returned to in-person learning, but his wife now works only sporadically depending on how she feels physically. (Tr. 48 – 50, 60, 69, 78 – 79, 86 – 87)

The documentary information Applicant provided shows he has settled for lesser amounts the debts alleged at SOR 1.c and 1.e. He also provided information showing that he resolved a credit card debt owed to the creditor listed at SOR 1.d; however, that account is different than the account addressed in SOR 1.d, which remains unresolved. (GX 2 – 3; AX A – D; Tr. 39 – 41, 75 – 78)

The debts alleged at SOR 1.b and 1.f are for delinquent credit card accounts owed to the same creditor. That creditor filed civil suits to collect the debts, which total more than \$25,000. The civil suits were dismissed in June 2021 and January 2022 after Applicant hired an attorney to respond to the suits. He paid a retainer for legal services but acknowledged at hearing that he did not pay anything directly to the creditor. Despite the dismissal of the civil suits, I find from all of the available information that these debts remain unresolved. (GX 3; AX E; Tr. 71 – 75, 89 – 90)

Applicant disclosed all of the SOR debts in Section 26 (Financial Record) of his February 2020 e-QIP, and he indicated his intention to contact his creditors to “take care of it.” Nonetheless, he did not take any action to resolve any of his debts until after he received the SOR more than a year later. He has not taken any action regarding the SOR 1.a account since trying to contact that creditor around the time he received the SOR. A credit report dated August 5, 2022, shows that, since 2020, he has opened additional credit card accounts on which he is current but carries high balances. In April 2022, he purchased a new home for \$374,600. To obtain that mortgage, he made a down payment of about \$13,000, which he borrowed from family members and is still repaying. In November 2022, Applicant financed the purchase of a new car for about \$38,000 after making a \$3,000 down payment he borrowed from his brother, a debt he has since repaid. (GX 1; GX 2; Tr. 65 – 68, 78 – 79, 85)

Applicant's wife was not seriously injured as a result of her car accident; however, she has suffered back pain at times. In November 2021, in an effort to alleviate that pain, she underwent cosmetic surgery (commonly referred to as a “tummy tuck”) to reduce the size of her abdomen. In July 2022, she had another surgery due to complications from

the first procedure. Neither procedure was covered by Applicant's medical insurance, so his wife opened a credit account to pay between \$12,000 and \$20,000 for the procedures. Because Applicant is, for all intents and purposes, the sole income earner in the family, he will have to pay that debt. (Tr. 50 – 60)

When Applicant's wife had her car accident in 2018, his annual salary was about \$96,000. By 2021, his salary had increased through annual adjustments to about \$121,000. His net pay each week is about \$1,800, which equates to at least \$7,000 in monthly take-home pay. From that, he reports he pays a monthly mortgage of about \$2,755 (with taxes and insurance) and about \$600 for a car payment. He estimates that after all of his monthly expenses (utilities, phones, internet, food, gas, insurance, etc.), he has between \$2,000 and \$4,000 remaining. Applicant files his state and federal income tax returns on time each year; however, at his hearing he disclosed that he was four months late in paying a 2021 tax year bill of about \$900. Other than his responses to questions at his hearing, Applicant has not any information about how he manages his monthly finances. He also did not produce any information about how he plans to resolve his remaining debts. (Tr. 48 – 51, 62 – 65, 80 – 85)

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; 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;

(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.

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 did not meet his burden of refuting or mitigating the Government's information. He showed that only the debts at SOR 1.c and 1.e have been addressed. All of the remaining debts at issue, totaling \$44,116, are still unresolved. Applicant has not contacted the SOR 1.a creditor since he received the SOR; his information about the SOR 1.d creditor addressed a different account with that company; and the dismissal of the civil suits over the SOR 1.b and 1.f does not mean those debts are paid or otherwise resolved. Accordingly, his financial problems are recent, multiple, and ongoing. AG ¶ 20(a) does not apply.

The loss of Applicant's wife's income constituted an unexpected circumstance in 2018 and 2019; however, Applicant already had accrued the debts alleged in the SOR. Even though he was still making a good salary that continued to increase over the next two years, he did not address any of his debts until after he received the SOR in April 2021. The record does not show that he acted responsibly in response to the loss of his wife's income, either from the car accident or the need to stay home during the Covid-19 pandemic. The same information undermines any claim that he made good-faith efforts to resolve his past-due debts. AG ¶¶ 20(b) and 20(d) do not apply.

Finally, AG ¶ 20(c) does not apply. Applicant has not sought any professional counseling or assistance to resolve his debts or improve his ability to manage his personal finances, and there are no indications his financial problems are under control. To the

contrary, it appears he did not modify his spending and borrowing practices when his wife had her accident or during the pandemic. Rather than address his debts and reduce his expenses, he bought a house and a new car. Normally, these are not indicative of a problem, but Applicant had to borrow cash for his down payments from relatives and still was not addressing his past-due debts. He also now has to pay for elective cosmetic surgery for his wife, and he has continued to open new credit accounts since 2020, when his wife was out of work due to the pandemic. Finally, he has yet to pay his 2021 tax bill four months (as of the hearing) after filing his return, i.e., when they were due. All of the foregoing undermines confidence that Applicant will resolve his remaining delinquencies in the foreseeable future or that such financial problems will not recur. On balance, the security concerns raised by the Government's information remain unresolved.

I also have considered the potential application of AG ¶ 20(e). The record evidence as a whole presents significant remaining doubts about Applicant's judgment and reliability. He was already accruing excessive personal debt when his wife stopped earning income. His unwillingness to address his debts until after he received the SOR, along with the lack of any coherent plan for paying his remaining debts and improving his financial circumstances, only reinforce doubts about his suitability for continued 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, and 1.f:	Against Applicant
Subparagraphs 1.c and 1.e:	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