



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



In the matter of: )  
)  
)  
[NAME REDACTED] ) ISCR Case No. 21-02291  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

11/08/2022

---

**Decision**

---

MALONE, Matthew E., Administrative Judge:

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

**Statement of the Case**

On September 24, 2020, 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. Such a 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 November 1, 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 guidelines cited in the SOR were 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) on November 10, 2021, and requested a hearing before an administrative judge. I received the case on April 8, 2022, and convened a hearing on June 28, 2022. The parties appeared as scheduled, and I received a transcript of the hearing on July 8, 2022.

At the hearing, Department Counsel proffered Government Exhibits (GX) 1 – 5. Additionally, a copy of a discovery letter dated January 13, 2020, and a list of the Government's exhibits are included in the record as Hearing Exhibits (HX) 1 and 2, respectively. Applicant testified and produced Applicant Exhibits (AX) A – K. Without objection from Applicant, I excluded AX K, a copy of Applicant's signed receipt of the Notice of Hearing, which had no substantive bearing on his case. I admitted all of both parties' remaining exhibits without objection. (Tr. 15 – 31)

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$17,234 for six delinquent or past-due debts (SOR 1.a – 1.f). SOR 1.f alleges a \$16,264 debt (or about 94 percent of the total debt at issue) for the delinquent remainder after resale from a vehicle repossession. In response to the SOR (Answer), Applicant admitted with explanations all of the Guideline F allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 43 years old and has worked for a defense contractor since September 2020. He served on active duty in the U.S. Army from March 2008 until being medically retired as a sergeant first class in September 2019. Thereafter, he was unemployed until he began working for his current employer in a position that requires eligibility for access to classified information. Before he joined the Army, he worked for a construction company near his hometown. When Applicant left the Army, the Department of Veterans Affairs (VA) assessed him as 100 percent disabled and he receives monthly disability benefit payments based on that assessment. (Answer; GX 1; GX 2; AX I; Tr. 59 – 61)

Applicant and his wife have been married since May 2002. They have two children, ages 18 and 20. In 2002, when she was pregnant with their first child, Applicant's wife became ill with cancer. As a result, she was unable to work and their child was born prematurely. Additionally, they incurred medical and other debts that went unpaid due, in part, to the loss of his wife's income. When Applicant joined the Army, he still owed more

than \$43,000 in past-due or delinquent debts. He estimates that at one point, he owed between \$250,000 and \$300,000 in unpaid debts. His first application for a security clearance was denied in July 2011, because of security concerns about his finances alleged in a Letter of Intent to Deny Security Clearance and an enclosed SOR, dated June 1, 2009. However, he stated in his e-QIP that in October 2011, he received a clearance after reconsideration of the decision to deny his application. Applicant was able to resolve some of the debts listed in that SOR, but he acknowledges many of them simply aged off his credit history. None of those debts appears on either of the credit reports submitted by the Government in this case and the SOR did not allege any of these debts. (GX 1 – GX 5; Tr. 33, 44 – 46)

Applicant asserts that the delinquent debts he carried when he joined the Army were the result of his wife's inability to work when she became ill in 2002. In 2009, his wife's cancer returned and she again could not work. This caused further financial difficulties as they tried to resolve the debts alleged in the 2009 SOR and still make ends meet on a junior enlisted salary. The debts listed in the 2009 SOR consisted of 26 unpaid medical debts presumably associated with his wife's cancer treatment in 2002. Those debts totaled about \$7,844, and one of them was the subject of a civil judgment against him. At the time of his wife's 2002 cancer diagnosis, he had medical insurance through his construction job that covered about two-thirds of his wife's medical expenses. In the Army, he and his family also had medical insurance that would have covered most of her cancer treatment. The 2009 SOR also listed other non-medical debts, including a \$10,000 tax lien, two car repossessions, two civil judgments against him, and 12 other delinquent debts, all of which totaled about \$34,850. (Answer; GX 2; GX 5; AX G – I; Tr. 42, 46 – 49)

In March 2018, Applicant's wife was diagnosed a third time with the same type of cancer. This time, she underwent a procedure that her physicians previously had chosen not to perform. The procedure in 2018, according to Applicant, resulted in a successful eradication of her cancer. He and his wife are optimistic that the cancer will not return. Again, Applicant had medical insurance for his family provided as part of his military service. Because of this latest bout with cancer, Applicant's wife again was unemployed, this time for about nine months. She returned to work in early 2019; however, later that year, Applicant was medically retired from the Army and found himself unemployed. They lived on his wife's net monthly income of about \$2,000 and Applicant's VA disability of about \$2,800 a month until he started his current job in September 2020. At that time, he earned an annual salary of about \$72,000. After a pay raise in April 2022, he now makes about \$92,500 and his total household income is about \$150,000 before taxes and other deductions. (Answer; GX 2; AX G – I; Tr. 33 – 34, 48 – 50)

When Applicant submitted his most recent clearance application, he disclosed the debt alleged at SOR 1.d. During the ensuing background investigation, credit reports and Applicant's statements during his December 16, 2020, personal subject interview (PSI) yielded information that supports all of the allegations in the November 2021 SOR. During his PSI, Applicant discussed all but one (SOR 1.b) of the debts alleged in the SOR; however, he stated in his Answer that he was not aware of debts other than the

repossession debt at SOR 1.d until he received the SOR. In response to the SOR, he provided information showing that, ten days after the date of the SOR, he paid or otherwise resolved the debts at SOR 1.a, 1.b, and 1.c. At hearing, he testified that the statement that he was unaware of his debts until he received the SOR was the result of help he received from a fellow employee in drafting his Answer. However, he acknowledged that he was, indeed, aware of his debts as early as December 2020. (Answer; GX 1 – 4; AX A – C; AX F; Tr. 33)

The \$16,264 debt at SOR 1.d is still unpaid. It represents the remainder after resale of a pickup truck Applicant purchased for \$37,948 in October 2017. Starting in January 2018, he was two months behind on his loan payments. By September 2018, he was five months behind on his \$700-a-month payments and decided to have the truck voluntarily repossessed. Applicant attributed his difficulty in staying current on that loan to the fact that his wife again developed cancer in early 2018 and they did not have her income while she underwent treatment. After resale of the vehicle, he still owed the amount alleged at SOR 1.d. During his December 2020 PSI, Applicant stated that he was in negotiations with the creditor to repay that amount over four years. In response to the SOR, he stated that in November 2021, the creditor offered to settle this debt for \$9,546 over 12 months, or \$795 each month. At hearing, he testified the creditor offered to settle the debt for 12 monthly payments of \$940, which would total of \$11,280. His position at hearing was that he could not afford to pay that amount. This debt remains unresolved. (Answer; GX 1 – 4; AX G – I; Tr.)

Applicant did not provide any corroborating documentation about the SOR 1.d creditor's settlement offer to resolve the apparent discrepancy between the settlement terms described in his Answer and those described at hearing. He also did not provide any detailed information about his current finances, such as a monthly budget or other personal financial statement that might shed better light on his ability to pay this debt. Further, he did not present any information about what, if any, adjustments he and his wife made to their expenses during her periods of unemployment or after his medical retirement. Applicant has not sought or obtained any professional financial counseling or assistance in resolving his remaining debt or improving the way he and his wife manage their finances.

In June 2020, while he was still unemployed, Applicant purchased a motorcycle for \$10,273. He sold it in early 2022 for a price that enabled him to satisfy the remaining \$9,269 due on the loan as well as realize about \$1,500 in profit. In November 2020, after he began his current job, he purchased a new pickup truck for \$69,500 to replace a used vehicle he had been driving. Not long thereafter, he was in an accident and, in May 2021, he purchased another vehicle for \$46,797. He did so with an understanding from the dealer that in six months, he could trade that vehicle for the same model pickup truck as he bought in November 2020, but on better terms. In November 2021, he tried to avail himself of the dealer's offer. Instead, he claims he could not obtain a loan on a less expensive truck and wound up buying a new model pickup truck for \$66,141. His high monthly payment includes the balance due on the May 2021 vehicle. Applicant claims he

could not obtain financing for a used vehicle, and he did not explain what role, if any, insurance played after his accident involving the first truck he bought in November 2020. (GX 4; Tr. 52 – 59)

As noted, above, during the December 2020 PSI, Applicant and the investigator did not discuss the debt at SOR 1.b, and he avers that he was unaware of it until he received the SOR. He subsequently resolved the debt through four payments made in November and December 2021. The record is unclear as to the origin of this debt. Applicant claims the bills for this debt went to his mother's house, which was his military home of record, even though Applicant has not lived there since he and his wife got married in 2002. As to his overall knowledge of his various debts, he testified that he checked his credit report when he completed his e-QIP in September 2020. According to the October 2020 credit report introduced by the Government, SOR 1.d had been delinquent since October 2017. I did not find his explanation about his awareness of this debt to be credible and I find as fact that he knew about this debt well before he received the SOR. (Answer; GX 1 – 4; AX F – I; Tr. 36)

At hearing, Applicant provided a character reference from his supervisor of the past two years. According to the author, Applicant has performed exceptionally well during his tenure with the company. He is well-regarded in the workplace, and he is knowledgeable, reliable and professional in the performance of his duties. (AX J)

### **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 presented sufficient information to support the SOR allegations that Applicant accrued significant past-due or delinquent debt, the single largest of which constituted about 94 percent of the debt at issue and was still outstanding as of the hearing. 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;

(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.

AG ¶ 20(a) does not apply because Applicant's financial problems are recent and multiple. His debt from a 2018 repossession is still not resolved. His other debts arose within the past four or five years, and he only resolved them after receiving the SOR.

AG ¶ 20(c) does not apply because Applicant did not present any information to show he sought or obtained any professional assistance in resolving his debts or improving the way he manages his personal finances. As to the latter, he did not present any information reflecting how he and his wife manage their income and expenses that might support a conclusion that his financial problems are under control.

AG ¶ 20(d) also does not apply. Even though Applicant has resolved the debts listed at SOR 1.a – 1.c, he did not act in a timely manner to resolve them. He knew about those debts either when he filled out his e-QIP in September 2020 or at the time of his December 2020 PSI. Nonetheless, he did not take any action until after he received the SOR in November 2021 despite the fact that both he and his wife had found regained employment and had in excess of \$100,000 annual household income. As to his repossession debt at SOR 1.d, Applicant stated in response to the SOR that he was aware of that debt when it arose in September 2018. Although he tried to negotiate a repayment plan, he provided conflicting information about the terms the creditor proposed. In one version, he described an offer that would have him pay \$9,546 (about 58 percent of the actual debt) over 12 months, which comes to about \$795 a month, as opposed to the \$700 monthly payment he was required to pay before defaulting on the

loan. In another version, he described an offer that would have him pay off the debt at a monthly rate of \$940 for 12 months. This would equate to a settlement payment of about \$11,280 (almost 70 percent of the original debt). This, of course, would be a significant increase in monthly payments over the original loan, but Applicant did not present personal financial information in sufficient detail to explain why he could not afford either of these pay-off scenarios. For example, if the settlement terms outlined in his Answer applied, the \$795 payment would have been only somewhat higher than the \$700 monthly required in the original purchase loan. Applicant's argument that the creditor's offer in settlement was unaffordable may be viable; however, without more information to corroborate the creditor's settlement offer, and better information about Applicant's monthly finances, I cannot conclude that Applicant engaged in good-faith efforts to resolve this debt.

As to AG ¶ 20(b), Applicant claims his financial problems are rooted in circumstances beyond his control; namely, the loss of his wife's income in 2002, 2008, and 2018 when she was battling cancer. Such events fall squarely within the meaning of uncontrollable circumstances; however, to receive the benefit of AG ¶ 20(b), it also was incumbent upon Applicant to show that he acted responsibly in the face of those circumstances. I conclude he did not meet that burden. Between 2018 and 2020, Applicant knew he owed the debts alleged in the SOR, yet he did not address SOR 1.a – 1.c, which totaled \$970, until after he received the SOR in late 2021. From what financial information he did provide, it is reasonable to conclude that he could have paid those debts in a timelier manner. This information, combined with his purchase of a \$60,000 vehicle at a time he could have been addressing his any of his past-due debts, raises doubts about Applicant's judgment when it comes to his finances, and, by extension, other areas where his decision-making may be important. On balance, I conclude he did not establish that he acted reasonably or responsibly in the face of whatever financial impacts may have resulted from his wife's repeated struggles with cancer.

In analyzing the record before me, I have considered the information about the 2011 denial of Applicant's security clearance because of financial problems that began before he entered the Army. The SOR in the present case did not allege that information. Nonetheless, in ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five purposes for which conduct not alleged in an SOR may be considered. One of those – to evaluate evidence of extenuation, mitigation, or changed circumstances – is applicable here. In the earlier denial, despite the availability of health insurance when his wife first became ill, the number and varying types of debts incurred suggests Applicant was not managing his money responsibly, and that he already was overextended financially when his wife became unable to work. More recently, after his wife overcame her last cancer diagnosis and returned to work in 2019, and after Applicant himself returned to work in 2020, available information shows he did not attend to his financial problems in a responsible way until confronted with the possibility he would not receive a security clearance. Applicant bought a motorcycle he did not need while he was still unemployed. He bought a \$60,000 truck with \$700 monthly payments as soon as he found work. After starting his job, he was inattentive to his debts until he received the



SOR. Combined with a lack of information about his current finances that would generate confidence in his financial judgment, all of the foregoing sustains the doubts about Applicant's judgment regarding his finances that have been raised by the record evidence as a whole. On balance, available information is not sufficient to mitigate the security concerns raised by the Government under this guideline.

I also have evaluated this record in the context of the whole-person factors listed at AG ¶ 2(d). I have considered Applicant's military service, the difficulties Applicant and his wife went through after her three cancer diagnoses, and the positive recommendation from his supervisor of the past two years. However, it was Applicant's burden to provide sufficient information to establish that he acted responsibly in the wake of uncontrolled circumstances and that his financial problems will not recur. The record evidence as a whole does not show that he met his burden of persuasion. Available information does not resolve the doubts raised by Applicant's financial history. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual's request for access to classified information.

### **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 – d:	Against 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