



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 21-00125
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Applicant for Security Clearance)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2022

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 August 20, 2019, 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 ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by Department of Defense (DOD) Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly

consistent with the interests of national security to grant Applicant's request for a security clearance.

On March 26, 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 they applied is one of 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. I received the case on June 9, 2022, and convened a hearing on August 23, 2022. The parties appeared as scheduled.

At the hearing, Department Counsel proffered Government Exhibits (GX) 1 – 5, which I admitted without objection. Additionally, a copy of a list of the Government's exhibits and of a discovery letter dated June 28, 2021, are included in the record as Hearing Exhibits (HX) 1 and 2, respectively. Applicant testified but presented no documents. At the end of the hearing, I held the record open to allow Applicant to submit additional relevant information. He timely made the following post-hearing submissions:

- IRS Form 1099-C regarding SOR 1.a; and
- IRS Form 1099-C regarding SOR 1.b.

The record closed on August 29, 2022, after I admitted both documents without objection as Applicant's Exhibits (AX) A and B, respectively. I received a hearing transcript (Tr.) on August 31, 2022.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$27,602 for three delinquent credit card accounts (SOR 1.a – 1.c). In response to the SOR (Answer), Applicant denied, with remarks, all three allegations. After a thorough review of the record, I make the following findings of fact.

Applicant is 57 years old and works for a defense contractor in a position that requires eligibility for access to classified information. He started working for his current employer in March 2013 after a six-month period of unemployment that began with a lay-off from a previous position in the same industry. Applicant served in the Air Force from July 1983 until receiving an honorable discharge in March 1989. In December 2003, he earned a bachelor's degree in electrical engineering. Thereafter, he worked in the aerospace industry between July 2003 and October 2012. He held a top-secret security clearance in the Air Force, but it has since lapsed. (GX 1; GX 2; Tr. 25 – 27)

Applicant and his wife have been married since January 2016. He has been married twice before – between June 1983 and January 1986, and between January 1988 and February 2014. Both marriages ended in divorce. Applicant has one adult child from his first marriage and two adult children from his second marriage. (GX 1; GX 2; Tr. 22 - 25)

After his discharge in 1989, Applicant and his second ex-wife, who also was in the Air Force, stayed in State A until she also left the military. They then moved to State B and Applicant began his college studies while also working to support his family. In 2003, during his last year in school, he found work as an electrical engineer in State B, but at a location about two hours away. Applicant's ex-wife, who homeschooled their children and did not work outside the home, did not want to move. Starting in July 2003, Applicant continued to pay for their marital residence while also paying to live near work a few hours away. This effectively began their separation, which culminated in a divorce in 2014. During that 11-year period, Applicant paid between \$500 and \$650 a month to rent an apartment while also paying just under \$1,000 a month for the mortgage on their marital residence. Applicant's ex-wife took possession of the house as part of their divorce and Applicant has had no continuing financial obligation to her since their divorce. (GX 1; GX 2; Tr. 25 – 26, 54 – 56)

Applicant stopped paying the accounts listed in the SOR in March or April 2014. In late 2021, the debts at SOR 1.a and 1.b were cancelled by the creditors and attributed to Applicant as income for the 2021 tax year. He received an IRS Form 1099-C for each debt and testified that he reported the amounts forgiven (\$10,657 for SOR 1.a, and \$8,195 for SOR 1.b) as income on his most recent federal income tax return. (AX A and B; Tr. 58 – 62)

Applicant disclosed several past-due debts, including those alleged in the SOR, in Section 26 (Financial Record) of his e-QIP. A credit report obtained by investigators shortly thereafter also documents the debts alleged in the SOR. Applicant discussed those debts during a personal subject interview (PSI) with a government investigator on September 24, 2019. He has attributed his financial problems to his divorce in 2014 and to his unemployment between October 2012 and March 2013. He also testified that he exercised poor financial judgment, which included following poor financial advice from a girlfriend he had after he separated from his second wife. (GX 1; GX 2; Tr. 41)

In January 2019, Applicant resolved one of the debts he listed in the e-QIP when the creditor filed a lawsuit against his ex-wife to collect a delinquent credit card debt she had incurred in both their names during their separation. He paid about \$10,000 to satisfy his part of that debt. In late 2014, Applicant received a letter from another of the creditors listed in his e-QIP to whom he owed about \$20,000. The letter demanded payment and may have offered settlement terms. When he got the letter, he contacted an attorney at LegalShield™, a legal advice service provided by Applicant's employer at a discounted monthly rate. He spoke on the phone once to an attorney about what he should do in response to the creditor's letter. The attorney advised him to settle the debt, which he did

for about \$7,000 in early 2015. Applicant also asked what he should do about his other debts. The attorney told him to wait until his creditors contacted him to take any action. (GX 1; GX 2; Tr. 44 – 52)

Applicant never heard from his SOR 1.a – 1.c creditors. He also has not contacted them or made any payments to them in the past eight years. Those debts have since fallen off his credit report because of the passage of time, as required by the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq. At hearing, Applicant acknowledged that he intended to let reporting of his debts expire rather than initiate resolution efforts. He also acknowledged that the LegalShield™ attorney did not advise him to let his debts fall off his credit report. (Answer; GX 5; Tr. 37 – 41, 43, 57 – 58)

Applicant does not dispute any of the debts alleged in the SOR. He did not present any information showing he has sought professional financial assistance or counseling to help with his debts. He files and pays his income taxes on time, and he claims he now has a good credit rating and is able to meet all of his current financial obligations. (Tr. 52 – 53)

When Applicant started working in State B in 2003, he earned about \$50,000 annually. When he lost his job in 2012, he was earning about \$90,000. For the next six months, he supported himself and his family on savings and unemployment benefits. When he started working in March 2013, he earned between \$70,000 and \$80,000 annually. He now earns about \$105,000 annually. His current wife earns about \$50,000 annually. They live in a house she owns, and he pays the mortgage and all utilities, as well as his wife's monthly car payment. Applicant's net monthly income is about \$5,200. From that, he pays about \$3,200 each month in expenses; however, he estimated that he has only about \$500 remaining each month after expenses. (Tr. 45 – 50, 56 – 57, 65 – 67)

Applicant has two credit cards. On one, he carries a balance of about \$8,000, which he testified has been the case for over a year. The other card has a balance of about \$2,000. Applicant uses his cards to pay for regular expenses such as food, gas, home-repair items, and so forth. He explained that he uses the card with the higher balance instead of cash because it has a low interest rate. He pays about \$1,000 a month on his credit cards, but always carries a high balance. His wife has her own cards and pays for them separately. (Tr. 62 – 65)

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's information supports the SOR allegations that, starting in 2014, Applicant accrued at least three delinquent debts totaling more than \$27,000. As of the date of the SOR, Applicant had not addressed those debts and they remained unresolved. This information reasonably raises a security concern about Applicant's finances 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:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Available information shows that Applicant stopped paying his debts in the first half of 2014 after he had been unemployed in late 2012 and early 2013, and as he finalized a divorce in early 2014. Only twice in the ensuing eight years has Applicant acted to resolve any of his delinquent debts. In late 2014, he received a letter from a creditor to whom he owed \$20,000. He subsequently settled that debt for about \$7,000. In 2019, he had to resolve a delinquent marital debt when a creditor sued his ex-wife. Applicant was able to pay about \$10,000 to resolve his part of that debt.

As to the debts alleged in the SOR, Applicant has not contacted his creditors or tried to make any payments in the last eight years. When he contacted the LegalShield™ attorney after receiving a creditor's letter in late 2014 or early 2015, the attorney advised him to wait until he received any other correspondence before taking action to resolve his debts. The attorney did not advise him to wait for FCRA reporting limitations to take effect so the debts would no longer be on his credit report; however, that is precisely what he did. Despite having steady income starting in early 2013, and after his divorce was finalized a year later, Applicant did not initiate any efforts to resolve his debts, choosing instead to let them fall off his credit history. This information shows that he was unwilling to pay his debts, despite being able to do so, as shown by his payment of about \$17,000 to resolve two other debts. The foregoing also shows that he has a history of not paying his debts over at least the past eight years.

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;

(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.

The debts alleged in SOR 1.a and 1.b are resolved, but only because they were cancelled by the creditors as business losses, requiring Applicant to report those cancelled amounts as income on his 2021 income tax returns. Even if I were to find SOR 1.a and 1.b in Applicant's favor, AG ¶ 20(a) still does not apply because the debt at SOR 1.c remains unresolved after eight years. Further, his lack of action to resolve longstanding debts undermines confidence in his judgment and reliability.

As to AG ¶ 20(b), divorce and loss of employment fall squarely within the realm of unforeseen or uncontrollable circumstances. However, it was incumbent on Applicant to show that he acted responsibly in the wake of those circumstances. The record shows he decided to do nothing of his own volition. Instead, he waited for creditors to contact him and was willing simply to wait until FCRA limitations on adverse information reporting resulted in his debts falling off his credit history. When creditors did contact him, he made significant payments to settle those debts. It appears Applicant was able to resolve his debts over the past eight years but chose not to. For these reasons, I conclude Applicant did not act responsibly after his divorce and loss of employment. These same facts and circumstances also preclude a finding that he made good-faith efforts to resolve his debts. AG ¶ 20(d) does not apply.

Finally, AG ¶¶ 20(c) and 20(e) do not apply. Applicant did not present any information regarding professional financial or credit counseling services, and he did not dispute any of the debts at issue. The only advice he sought came from a single phone conversation in 2014 with an attorney regarding both a letter from one of his creditors and seeking advice about his other debts. That advice, the product of one phone call, does

not equate to financial advice intended to improve his finances or to establish a plan for resolving his debts.

Applicant claimed that his current finances are sound, because he and his wife live modestly and within their means. By contrast, the information he provided about his monthly income and expenses, and about the high balances on his credit cards, raises doubts about his spending habits and overall financial health. More important, his lack of action regarding his past-due debts undermines confidence in his judgment and reliability. On balance, Applicant did not mitigate the security concerns raised by the Government's information.

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 and the adverse impact of his divorce and unemployment on his personal finances. However, it was incumbent on Applicant 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 shows that he did not meet 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 – 1.c:	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