



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 21-00552
	)	
Applicant for Security Clearance	)	

**Appearances**

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

11/21/2022

\_\_\_\_\_  
**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 March 12, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a federal contractor. Thereafter, 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 April 16, 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). That guideline 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. I received the case on June 9, 2022, and convened a hearing on August 18, 2022. The parties appeared as scheduled, and I received a hearing transcript (Tr.) on August 26, 2022.

At the hearing, Department Counsel proffered Government Exhibits (GX) 1 – 7. Applicant testified and produced Applicant Exhibits (AX) A – M. I admitted all of the proffered exhibits without objection. Additionally, a copy of a list of the Government's exhibits and of a discovery letter dated June 30, 2021, are included in the record as Hearing Exhibits (HX) 1 and 2, respectively. (Tr. 16 - 38) At the end of the hearing, I held the record open to allow Applicant to submit additional relevant information. The record closed on September 9, 2022, when I received the following post-hearing submissions:

- Applicant's one-page, undated statement. It is admitted as AX N.
- A one-page letter, dated September 8, 2022, pertaining to SOR 1.i. It is admitted as AX O.
- A four-page exhibit containing information about Applicant's application for consolidation of and relief from student loans. It is admitted as AX P.
- A two-page exhibit containing emails regarding Applicant's 2018 and 2020 federal income tax returns. It is admitted as AX Q.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$180,585 for 22 delinquent or past-due debts (SOR 1.a – 1.v). In response to the SOR (Answer), Applicant admitted the allegations at SOR 1.a – 1.h, 1.j – 1.m, 1.q, 1.s, and 1.u. He denied the remaining allegations, and he provided explanatory remarks with all of his responses. At the end of the hearing, as provided for by paragraph E3.1.17 of the Directive, Department Counsel moved to amend the SOR based on information developed during the hearing. (Tr. 92 – 98) I granted the motion and amended the SOR to add, as SOR 1.w, the following allegation:

You failed to timely file, as required, your federal and state income tax returns for at least 2018 through 2021. As of the date of this *Amendment to Statement of Reasons*, the returns remain unfiled.

Because the record remained open after the hearing, I allowed Applicant to defer his response to the new allegation until September 9, 2022, when his other post-hearing submissions were due. I have included in the record as HX 3 a copy of the amendment and Applicant's response, in which he admitted the additional allegation. (Tr. 95 – 97) In addition to the facts established by Applicant's admissions to the original SOR and to SOR 1.w, I make the following findings of fact.

Applicant is 38 years old and works for a defense contractor in a position that requires he be eligible for access to classified information. His current employment began in July 2022, but his previous employer, for whom he still works in a similar position on a part-time basis, sponsored his March 2020 security clearance application. Applicant served as an active duty and reserve member of the U.S. Navy between 2004 and 2007. He first received a security clearance in 2004. After earning bachelor's and master's degrees in 2014 and 2015, respectively, he began studying for a doctoral degree in 2016, but completed only one semester. (GX 1; GX 2; Tr. 54, 79)

Applicant was married from February 2005 until December 2020, when he and his ex-wife finalized a divorce. They separated in 2016. Applicant has a son, age 15, and a daughter, age 18, with his ex-wife. He has full custody of his son. When they separated, Applicant and his ex-wife agreed that Applicant would provide between \$600 and \$1,000 each month to support his daughter. After their daughter turned 18 in December 2021, his child support obligation ended. (Answer; GX 1; GX 2; Tr. 57, 77 – 79)

In Section 26 (Financial Record) of his e-QIP, Applicant disclosed that he had experienced "financial hardships" after separating from his ex-wife in 2016. He also listed a credit counseling resource with whom he was working to resolve his debts. He did not list any of the debts in his e-QIP; however, credit reports obtained by government investigators shortly after he submitted his e-QIP reflect the debts alleged in SOR 1.a – 1.v. Additionally, Applicant discussed those debts during a personal subject interview (PSI) on April 16, 2020. (GX 1 – 5; GX 7)

The debts alleged at SOR 1.a – 1.h, and 1.j – 1.m are for student loans that became delinquent in April 2017. They total \$153,943, or about 85 percent of the total debt alleged in the SOR. Applicant obtained the loans between 2010 and 2016 to pay tuition for his undergraduate and graduate studies. They were in forbearance when he matriculated for his doctoral studies; however, those studies only lasted one semester in 2016. Applicant dis-enrolled because he and his ex-wife had separated and he decided could not continue his studies while meeting his obligations as a single father and still work enough hours to pay child support. After he stopped going to school, his loans were no longer eligible for forbearance. After a subsequent grace period, his student loans came due; however, he could not afford to pay them. (Answer; GX 2; AX A; Tr. 50 – 51, 79)

In June 2020, Applicant applied for relief from his student loans through the Public Service Loan Forgiveness (PSLF) program. PSLF is a U.S. Department of Education

(USDE) program that may allow certain employees of federal, state, and local agencies, or of not-for-profit organizations, to obtain relief from or forgiveness of student loans underwritten by the federal government. Information about PSLF found on the USDE webpage (<https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service>), and on Applicant's application, lists the qualification requirements regarding, in relevant part, type of employment, type of loan, and history of payment. Applicant did not present information that shows he meets any of those qualifications. Even though his employer contracts with the federal government, it is a for-profit company, a category specifically excluded from PSLF. Additionally, Applicant did not show that he has made 120 qualifying payments on his loans. As to the type of loan eligible for PSLF, it appears Applicant's loans are included in that program. (AX P; Tr. 40 – 41, 48 – 49, 56)

On April 28, 2021, Applicant began a student loan rehabilitation program repayment plan. Under that plan, he consolidated all of his delinquent student loans into one monthly payment. He was required to pay \$5.00 each month for at least nine months. If he did so, his loans no longer would be delinquent and would start making higher, income-based payments. Applicant made two or three payments, then stopped because of government-directed suspension of payments during the COVID-19 epidemic. His loans were then sold to another servicing corporation and he was advised to consolidate his loans before he could resume his rehabilitation program or embark any other repayment plan. On August 2, 2022, 16 days before his hearing, Applicant resubmitted his PSLF application and a request to consolidate his loans. A credit report dated August 10, 2022, lists his student loans as deferred until November 2022, at which time he estimates his monthly payments will be about \$700. Based on all of the foregoing, I find that Applicant's student loans are not currently delinquent. However, he is not eligible for PSLF and, after his current deferral ends, he will have to begin repaying all of the student loans alleged in the SOR. (Answer; GX 3 – 5; GX 7; AX C; Tr. 51 – 57)

In June 2019, Applicant enlisted the services of a financial counseling firm to resolve debts that remained from his marriage. He averred that the financial counselor with whom he worked used improper methods to make it seem as if those debts he felt were his ex-wife's responsibility had been resolved and his credit rating restored. He explained that she froze his credit and claimed to have corresponded with his creditors. Because he thought the financial counseling firm had resolved his financial problems, he took no further action, even after his PSI in April 2020. After he received the SOR, he contacted another financial counseling firm who guided him through the process of corresponding directly with his creditors to negotiate settlement of his debts. He testified that he sent letters to his creditors, but that he has not followed through on any other actions recommended by the second financial counseling firm. (Attachments to Answer; GX 1; GX 2; Tr. 41 – 43, 63 – 66, 79 – 83)

The debt alleged at SOR 1.i is the remainder due from a car loan Applicant stopped paying in March 2016. He claims the car was assessed as a total loss after a flood, and that gap insurance should have covered the balance left on the loan. In July 2022, Applicant made a \$500 payment, which left a remaining balance of \$5,466. At hearing,

he claimed that he had reached a settlement with the creditor whereby this debt would be resolved for \$500. He has since satisfied the debt, but the record is not clear regarding how much he had to pay to do so. Nonetheless, SOR 1.i is resolved. (Answer; GX 2; GX 3; AX D; AX O; Tr. 41 – 43, 58 – 61)

Applicant denies he is responsible for the \$1,221 debt at SOR 1.n, claiming instead that it his ex-wife's obligation. The debt is for an unpaid loan, originally for \$800, he obtained in 2016. Credit reports list this as Applicant's individual account. The creditor has agreed to accept \$500 to resolve this debt. Applicant did present information showing he actually has paid this debt and it remains unresolved. (Answer; GX 2 – 4; GX 7; AX B; AX E; Tr. 43 – 44, 62 – 63)

Applicant denies he is responsible for the \$588 debt at SOR 1.o. The debt is for an unpaid utility bill he claims is his ex-wife's obligation. Credit reports list this as Applicant's individual account. Despite having discussed this debt during his PSI, he did not pay it until four days before his hearing. (Answer; GX 2; AX B; AX F; Tr. 44, 62 – 63)

Applicant denies he is responsible for the \$560 debt at SOR 1.p, claiming instead that it his ex-wife's obligation. Credit reports list this as Applicant's individual account. In August 2022, the creditor agreed to accept \$757 (after interest and penalties) to resolve this debt through monthly payments of \$122. Applicant made the first payment on August 1, 2022. This debt is not yet resolved. (Answer; GX 2; GX 3; GX 4; GX 7; AX B; AX E; Tr. 44, 62 – 63)

The \$224 and \$138 debts alleged at SOR 1.q and 1.s, respectively, are for overpayment of GI Bill benefits from the Department of Veterans Affairs (VA). As of May 2021, Applicant's VA debts were resolved. (Answer; AX B; AX H; Tr. 44 – 45)

The \$205 debt alleged at SOR 1.r is for unpaid insurance premiums that remained when Applicant switched insurance carriers. He claims he was unaware of the debt until he received the SOR in April 2021. He paid the debt on August 1, 2022. (Answer; GX 3; GX 4; GX 7; AX B; AX I)

Applicant denies he is responsible for the \$4,555 debt at SOR 1.t, claiming instead that it his ex-wife's obligation. The debt became delinquent in March 2020 and was discussed during Applicant's PSI. Credit reports list this as Applicant's individual account. The creditor has agreed to accept \$396 monthly payments, the first of which Applicant made on August 1, 2022. (Answer; GX 2; GX 3; GX 4; GX 7; AX B; AX J; Tr. 45 – 46)

Applicant denies he is responsible for the \$12,179 debt at SOR 1.u. It represents the remainder after resale of a car he owned before he and his ex-wife separated. It was repossessed in August 2016. During his PSI, in response to the SOR, and at hearing, Applicant claimed his ex-wife agreed to make the payments for this car but failed to do so. Credit reports list this as Applicant's individual account. On August 1, 2022, Applicant reached a repayment agreement with this creditor and made the first of three \$1,624

payments to settle this debt for about one-third of the actual amount due. This debt is not resolved. (Answer; GX 2 – 4; GX 7; AX K; Tr. 46 – 47)

SOR 1.v alleges that, as of the date of the SOR, Applicant owed \$868 in unpaid state taxes and that, in September 2011, the state obtained a tax lien against him to enforce that debt. Available information shows that he satisfied the lien in April 2013. SOR 1.v is resolved for Applicant. (Answer; GX 2; GX 5; GX 6; AX L; Tr. 47, 65 – 66)

As alleged in SOR 1.w, Applicant has not filed his federal or state income tax returns since 2018. During cross-examination regarding the current state of Applicant's personal finances, Department Counsel asked him if he had complied on time with his federal and state income tax reporting obligations. Applicant disclosed that he has not filed any personal income tax returns since 2018. Based on the advice of a friend, he believed he only had to file his income tax returns every three years. Applicant admitted this allegation in response to the Government's SOR amendment. He also provided information showing that he filed for filing extensions for the 2018 and 2020 tax years. He did not provide information that shows he has actually filed any tax returns for the 2018 through 2021 tax years, although he has gathered the information he needs to file his 2021 returns. (AX N; AX Q; HX 3; Tr. 66 – 68)

Applicant claims his current finances are sound and that he meets all of his current obligations on time. He is working full time for one defense contractor and part time for another. He works between 46 and 70 hours weekly and earns between \$53,000 and \$56,000 annually. Applicant has been living with his mother in a house she owns and has been contributing about \$800 monthly for her mortgage. As of the hearing, he planned to move in with a girlfriend. As to his ability to start paying his student loans when his deferral ends, he stated he would be able to because he no longer has to pay child support for his older child. Apart from answering general questions about his finances, he did not provide any detailed information from which to gauge his ability to repay his student loans when his deferment ends, or that might shed better light on how he manages his income and expenses each month. (Tr. 57, 68 – 76)

### **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;
- (b) a history of not meeting financial obligations; and
- (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.

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;
- (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; and



(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.

AG ¶ 20(a) does not apply because Applicant's financial problems are recent, multiple, and in many instances, unresolved.

AG ¶ 20(c) only partially applies. To his credit, Applicant sought assistance in 2019, even though the person he retained possibly was perpetrating a fraud. As a result, he thought his financial problems had been meaningfully addressed and he took no further action until after he received the SOR. When he learned his debts were still delinquent, he retained another credit assistance resource; however, he did not present any information that reflects a debt resolution plan, and he admitted that he did not follow up on that firm's recommendations.

Aside from the tax lien at SOR 1.v, which was resolved well before the SOR, AG ¶ 20(d) also does not apply. As to his student loans, Applicant relies on his application for relief through the PSLF program. However, he did not establish that he might qualify. He also started a student loan rehabilitation program, but only after receiving the SOR. He made only three \$5 payments under that program. As to his other debts, he argues that he did not act sooner to start resolving his debts because he thought his first financial counselor had resolved everything. To overcome that setback, he retained another credit counselor, but he did not follow through on an identifiable plan to negotiate with creditors and resolve his debts. In short, despite being aware of having delinquent debts as far back as his April 2020 PSI, Applicant did not take any identifiable action to resolve his debts until after he received the SOR. In some cases, he did not act until just before his hearing. In the case of his student loans, which comprise most of the debt at issue, he did not establish that he would be able to pay them after deferral.

AG ¶ 20(e) does not apply because he did not support his claims that many of the debts at issue here are his ex-wife's responsibility. To the contrary, all of the debts at issue here are individual accounts according to his credit reports.

AG ¶ 20(g) does not apply because the only information Applicant provided about his federal and state income taxes between 2018 and 2021 showed that he requested filing extensions in 2018 and 2021. Those extensions have since expired, and Applicant has not filed his past-due returns or arranged with state and federal tax authorities to bring current his filing status.

As to AG ¶ 20(b), Applicant claims his financial problems are rooted in circumstances beyond his control; namely, the end of his marriage in the 2015 – 2016 timeframe. Such an event falls 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. For the same reasons that preclude application of AG ¶ 20(d), I conclude he did not meet that

burden. 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 and the adverse impact his divorce likely had on his personal finances. However, it fell to 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 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 – 1u:	Against Applicant
Subparagraph 1.v:	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