



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-01733  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Melissa L. Watkins, Esq.

03/08/2022

**Decision**

MASON, Paul J., Administrative Judge:

Applicant’s positive character evidence is insufficient to mitigate the evidence presented under the Guidelines for financial considerations and personal conduct. Eligibility for security clearance access is denied.

**Statement of the Case**

On August 3, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated October 14, 2020, detailing security concerns raised by financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken under Executive Order (E.O.) 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); the adjudicative guidelines (AG) effective in the DOD on

September 1, 2006; and the revised AGs that were made effective on or after June 8, 2017.

Applicant provided his notarized answer on November 2, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 26, 2021, for a hearing on October 7, 2021. The hearing was held as scheduled. The Government's four exhibits (GE) 1-4 and Applicant's 11 enclosures (Enc.) 1-11 were entered into evidence without objection. Nine character endorsements were submitted on Applicant's behalf. Two of those endorsements also provided live testimony, Applicant's wife by in-court testimony and his employer by telephone testimony. Applicant testified. At the conclusion of the hearing, his attorney's request for the record to remain open to investigate the status of the state tax debt identified at SOR 1.c, was granted. On October 22, 2021, Applicant's attorney informed me that the state tax agency did not have pertinent records to shed light on SOR 1.c, and that she had no additional documentation to submit. DOHA received the transcript on October 14, 2021. The record closed on October 22, 2021.

### **Rulings on Procedure**

Applicant has a partial hearing disability. Two sign language interpreters, whose qualifications were stipulated to by the parties, participated in the security clearance hearing. Their purpose was to translate verbal interchanges between the parties, witnesses, a telephone witness, the court reporter, and Applicant. (Tr. 5-8) The October 7, 2021 hearing began at 10:09 a.m. and ended at 12:32 p.m.

### **Findings of Fact**

The original SOR contains two allegations under financial considerations guideline and one allegation under the personal conduct guideline. In his answer dated November 2, 2020, Applicant, unrepresented by counsel, admitted the three factual allegations. He noted that he had paid 92% of the Social Security Administration (SSA) debt (SOR 1.a) and hoped to have the balance paid in March 2021. He stated he was wrong to take the SSA benefits, but pointed out that he was honest in disclosing that he owed the SSA money.

On November 30, 2020, Department Counsel moved to amend the October 2020 SOR by adding SOR 1.c and 2.b as follows:

SOR 1.c. You are indebted to the State of Maryland for a tax lien filed against you in 2016 in approximate amount of \$9,503. As of the date of this SOR. The lien remains unpaid.

SOR 2.b. You falsified material facts on an e-QIP, executed by you on or about August 3, 2018, in response to "**Section 26 – Financial Record In the last seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law

or ordinance.” You answered “No,” and thereby deliberately failed to disclose the delinquent tax debt set forth in SOR 1.c above. In his December 20, 2020 answer, Applicant admitted both allegations.

On March 7, 2021, Applicant, represented by counsel, filed a revised answer to the amended SOR. The answer is 114 pages in length. He expressed revised positions with partial admissions and partial denials to all factual allegations, and discussed mitigating circumstances.

Applicant is 48 years old. He married his first wife in 1997. She passed away in October 2013. He received an Associate’s degree in computer information systems in 2001. (Enc. 10) He has been employed as a network engineer with his current employer since June 2020. He has held the same position for three previous employers since 2010. He married his current wife in February 2016. She has four daughters. (GE 1 at 21; Tr. 76) Applicant has held a security clearance since December 2010. (GE 1 at 41; GE 2 at 5; Tr. 76; Enc.10)

SOR 1.a, 1.b - Because of his partial deafness, Applicant began receiving SSA disability benefits in 2000 after he married his first wife in 1997. (Tr. 25-26, 49-50) He testified that when a person is on SSA disability benefits, he is not entitled to benefits if he works over a set number of hours. When Applicant returned to work full time in November 2010, following a three or four-year period of intermittent part-time and full-time employment, he was over the limit. (Tr. 26-27) His employment history reveals that he worked full time for a security company from February to July 2010, but did not inform SSA about the job, nor did he inform SSA about his full-time employment with the title search company (February 2008 to November 2009). Applicant never told SSA about full employment until he visited an SSA office in 2018. (Tr. 53-54, 59-60; Enc. 10)

Applicant continued to collect SSA benefits after returning to work in November 2010. In November 2011, his first wife’s health was deteriorating with her three children (apparently from another marriage) experiencing serious financial problems. Her oldest daughter could not pay the rent and the daughter’s husband was unemployed. Her son was also going through financial issues. Fearing death was imminent, she asked Applicant to continue receiving benefits for her children. Knowing that the stress related to her illness might increase if he refused, he agreed to continue collecting SSA benefits. In total, Applicant collected \$50,354 in SSA benefits. He knew that while working full time for his employer between November 2010 and 2014, his earnings were too much to continue collecting full benefits. Surprisingly, even after learning about his first wife’s serious illness in late 2011, combined with her earnest request for him to continue collecting the benefits so he could maintain his obligation to her three children, Applicant told the OPM investigator in October 2019 that he simply forgot to inform the SSA for two years that he was still collecting benefits after he resumed working in November 2010. He was 39 years old when his wife died in October 2013. (GE 1 at 20-21; GE 2 at 10; Tr. 25-26, 47-50, 57-58)

Applicant claimed he stopped collecting the SSA benefits after his wife died in October 2013. With his retirement account from the employer he worked for from 2010 to January 2020, he paid off most of the benefit debt in 2020 (Enc. 2 at 16), and the balance in April 2021. (AE C at 112-114) Applicant testified that he was unable to set up an earlier payment plan in the two SSA meetings in 2018 because the federal agency wanted him to make payments he could not afford. (Tr. 27-32)

SOR 1.b - After the SSA discovered Applicant was working full time from his income tax returns, they sent him a letter in 2014 about the benefits after his wife passed. He originally tried to appeal the amount he collected from SSA (circa 2010 to 2014) seeking to have the benefit amount he owed discharged completely; his appeal was denied in 2015 or 2016. SSA scheduled two appointments for Applicant in 2017, but he did not appear for either one. He visited an SSA office in 2018 on two occasions, but could not afford a payment plan of \$1,800 a month. SSA garnished his wages in January 2019 for \$700 a month. (Tr. 58-61) He did not challenge the garnishment because he concluded that he could manage the monthly garnishment amount. He believes that after he received the SOR (October 2020), he recognized that he could lose his clearance and his job, so he decided "to be proactive and take responsibility and be accountable for my mistake." (Tr. 33) Applicant removed the garnishment when he restored the SOR 1.a debt to a current status. (Revised answer to amended SOR at 4; Enc. 2) Applicant regrets taking the SSA benefits and believes he will not repeat this conduct in the future. (Tr. 34)

SOR 1.c – This debt is a state tax lien of \$9,503 filed against Applicant and his first wife in July 2016. (GE 4; Enc. 2) He submitted some payments on the debt and the lien was released in December 2020. (Enc. 4) Applicant indicated he became aware of the lien after discovering at the state division of motor vehicles in 2018 his account was flagged because of an outstanding debt. The state tax agency confirmed the debt, but they did not explain what the debt represented. Documentation (Enc. 3) shows the lien was released on December 29, 2020 and Applicant avers he made all payments that satisfied the lien. (Revised answer at 5) However, he provided a record of only six payments totaling less than \$5,000, and all dated in 2020. See, Enc. 4 and 5. He surmised that the size of the lien is due to added interest and penalties. (Tr. 65) Applicant speculated that the lien applied to tax year 2016, but could not provide a reason. (Tr. 37)

SOR 2.a - Applicant insists that his full disclosure of the SSA debt on his August 2018 e-QIP is evidence of his forthrightness throughout the security investigation. (Revised answer at 8) Applicant did not inform SSA about the periods of full employment until 2018, after the federal agency discovered his full employment history from his 2014 income tax returns. (Tr. 58-61)

With regard to SOR 2.b, Applicant admitted the falsification in December 2020. However, in March 2021, he denied that he knowingly omitted the information about the state tax debt. He asserts that he did not know about the debt. (Revised answer at 9;

Enc. 3, 4) Applicant had already commenced a payment plan with the state tax agency and did not believe he needed to disclose the lien on his August 2018 e-QIP. (Tr. 36; 42)

Applicant submitted a budget that reflects he has a monthly discretionary remainder of \$1,500, after he pays his expenses. (Enc. 6) The budget is called a "monthly budget," but the document is not dated and there is no indication that Applicant makes regular changes in his budget and explanations of how the budget interfaces with the manner in which his wife manages her finances. He has never been late on paying his debts. He has \$120,000 in two retirement accounts from two previous employers, and a March 2021 credit bureau report showing no delinquent debts. (Tr. 37-40; Enc. 8, 9) Applicant has never participated in financial counseling. (GE 2 at 6)

### **Character Evidence**

Applicant's employer testified that he has operated his company since 2008. Since beginning employment in June 2020, Applicant's performance as a network engineer has been excellent. While most employees experience challenges working on the night shift, Applicant's diligence has never wavered. The employer is aware of the general issues involved in the security clearance hearing, but he does not know specific details about the allegations. (Tr. 15-22; AE B at 103)

Applicant's current wife testified that she began dating Applicant in 2014. She married him in February 2016. When he talked to her about the debt to SSA, he appeared to be remorseful and embarrassed. She became concerned because, with four daughters, she has always tried to handle her financial responsibilities in a timely manner. The wife recalled two occasions of going to SSA in 2016 and 2017 with him to work out a payment plan. Each time SSA advised them that the agency would discuss a reduced payment plan and contact Applicant, but never did. They never pursued additional contact with the SSA because of lack of time. She was not aware that he filed an appeal to excuse him from paying the SSA benefits. She believed that Applicant learned about the SOR 1.c state tax lien in late 2015 or early 2016, but could not recall when she and Applicant established the payment plan to resolve the SOR 1.c tax lien. Applicant has always been honest with her. He has been a good husband in taking care of her and her four daughters. (Tr. 76-88; AE B at 102)

The third character reference has been Applicant's coworker for one and half years. He views Applicant as a trustworthy employee who gets his assignments done on time. (AE B at 104)

The fourth reference has been a coworker and supervisor for three years. Applicant is honest, follows the rules, and takes care of his finances. (AE B at 105)

The fifth character reference, Applicant's coworker for 10 years, has found him to be a dependable employee who follows the rules. (AE B at 106-107)

The sixth reference has been Applicant's supervisor for a year and believes he is a valuable employee who is adept at solving network problems. (AE B at 108)

The last three references commend Applicant's honesty and his habit of following the rules. All of the character references recommend Applicant for a security clearance. (AE B at 102-111)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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

### **Analysis**

#### **Financial Considerations**

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.

19. Conditions that could raise a security concern and may be disqualifying include:

(a) inability to satisfy debts;

(c) a history of not meeting financial obligations; and,

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

The manner in which a person pays his creditors is not a governmental concern until the record reveals that the person is unwilling or unable to meet their financial obligations. If a person demonstrates a pattern of financial irresponsibility, then he may also show irresponsibility in his obligations to abide by the rules associated with safeguarding classified information.

An equally important factor of debt payment is when those debts are repaid. If the record shows that the person acts to resolve the debts only after the Government puts him on notice that his clearance is at risk, then he may lack the necessary judgment to always comply with security rules, which includes those occasions when there is no immediate threat to his personal interests. See, e.g., ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017)

Applicant began receiving SSA disability benefits in late 2000. In November 2010, he resumed work full time. He also resumed collecting SSA benefits that he knew he was not entitled to because of his full-time employment status. Based on an income tax return, the SSA sent him a letter in 2014 to recover the funds that did not belong to him. Applicant did not appear for two scheduled SSA appointments in 2017. A garnishment action (SOR 1.b) was filed and enforced against Applicant's earnings in January 2019 to satisfy the delinquent debt in SOR 1.a. Applicant's failure to act on the SSA debt until after he received the SOR in 2020, meets AG ¶¶ 19(a) and (c). Applicant's intentional collection of SSA benefits on a regular basis and under deceptive circumstances falls within the scope of AG ¶ 19(d).

A state tax lien of \$9,503 filed against Applicant in 2016 is verified by documentation. In his November 2020 answer to the SOR, Applicant admitted that he owed the debt. AG ¶¶ 19(a) and (c) apply to this state tax lien.

20. Conditions that could mitigate security concerns include:

(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.

Applicant's fraudulent monthly acceptance of SSA benefits while working full time between 2010 and the end of 2013 may not recur. However, the conduct continues to cast doubt on his reliability, trustworthiness and good judgment because he knew the conduct was wrong, but continued to receive the benefits until his misconduct was discovered in 2014. Despite several requests by the federal agency over a four-year period to persuade him to repay the debt, the agency had to garnish his wages in 2019 to recover the benefits. After receiving the SOR in October 2020, Applicant paid a substantial portion of the debt because he believed he was at risk of losing his security clearance. AG ¶ 20(a) does not apply.

Applicant's four-month period of unemployment in 2010 is a circumstance recognized under AG ¶ 20(b). However, he has been steadily employed for the last 11 years without work-related disruptions or other unanticipated events. When he learned about his delinquent debts in 2014, he did not act responsibly to address his delinquent debt until after he received the SOR. Applicant receives no mitigation under AG ¶ 20(b).

Applicant receives some mitigation under AG ¶ 20(c). Though he has never had financial counseling, there is some indication that he is reestablishing control over his debts. Likewise, there is some evidence to support his good-faith effort to repay the state tax lien. Conversely, although the SSA debt has been repaid, the record precludes me from concluding that Applicant made a good-faith effort to repay the debt.

## **Personal Conduct**

15. 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 national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:



16. Conditions that could raise a security concern and may be disqualifying include:

(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. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information ...

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Sufficient disqualifying evidence under AG ¶ 16(d)(3) establishes rule violations. As discussed under AG ¶ 19(d) of the financial considerations guideline, when Applicant went back to work full time in November 2010, he resumed collecting SSA benefits for the next three years. He knew that collecting the benefits was wrong but he continued collecting them anyway. He stopped after being caught in 2014.

The potential mitigating conditions under AG ¶ 17 are:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness and good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to

untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's failure to act promptly to correct his intentional concealment of benefits has been addressed under AG ¶ 19(d) of the financial considerations guideline. His fraudulent concealment of SSA benefits was not minor, but demonstrated a pattern of dishonesty that netted him over \$50,000 that he was not entitled to. AG ¶ 17(c) does not apply. Though Applicant belatedly acknowledged his dishonest conduct, he displayed poor judgment in not trying to resolve the debt before he received the SOR. The mitigation due under AG ¶ 17(d) is limited. Sufficient evidence has not been submitted by the Government under SOR 2.b to establish that Applicant intentionally falsified Section 26 of his August 2018 e-QIP regarding taxes.

### **Whole-Person Concept**

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is a 48-year-old network engineer who has been married to his current wife since February 2016. She considers him to be a wonderful husband and very supportive of her four daughters. The owner of the company praises Applicant's work ethic and leadership abilities. Five additional coworkers and two supervisors are impressed with Applicant's honesty and reliability.

The foregoing favorable evidence does not mitigate the evidence that militates against Applicant's security clearance application. When he began receiving disability benefits in 2000, he knew that his benefits were required to be restricted if he worked on a full-time status. When he resumed work full time in November 2010, he did not inform the SSA of his full-time work status. But this was not the first time he failed to inform SSA about working full time. As noted in the factual findings, during two earlier periods of employment, he dishonestly received benefits even though he was working full time.

Given the earlier dishonest conduct, combined with Applicant's wrongful receipt of benefits between late 2010 and the end of 2013, his favorable character evidence does not overcome the adverse security concerns raised by 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge