



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-03756  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

05/03/2022

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**Decision**

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MASON, Paul J., Administrative Judge:

Eligibility for security clearance access is denied.

**Statement of the Case**

On December 19, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On January 13, 2020, she provided an interview (PSI) with an investigator from the Office of Personnel Management (OPM). 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 January 25, 2021, detailing security concerns raised by financial considerations (Guideline F). 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); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided her answer on March 1, 2021 as verified by her signature appearing on the hearing request attachment to her answer. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2022, for a hearing on February 4, 2022. The hearing was held by video teleconference as scheduled. The Government's 4 exhibits (GE) 1-5 and Applicant's two exhibits (AE) A-B were entered into evidence without objection.

By March 8, 2022, Applicant submitted four post-hearing exhibits (AE J-M). Without objection, the four post-hearing exhibits were admitted into evidence. DOHA received the transcript (Tr.) on October 7, 2020. The record closed on October 7, 2020.

### **Procedural and Evidentiary Rulings**

At the hearing, an examination of AE D (Amended Chapter 13 Plan) reveals that Applicant owes taxes for 2017 to the state and federal tax agencies because of the loss of an income deduction for his (SOR 1.a) mortgage and his property taxes. (Tr. 54-55; AE D at 2) Applicant is paying the posted tax balances through the Chapter 13 bankruptcy. Department Counsel moved to amend the SOR by adding two additional allegations:

1.c – You are indebted to the State of Maryland in the amount of \$1,426 for back taxes for tax year 2017.

1.d – You are indebted to the Internal Revenue Service (IRS) in the amount of \$7,667 for back taxes for tax year 2017.

Applicant's attorney did not oppose the amendment, noting that Applicant admitted the tax debts and was paying them through the pending Chapter 13 bankruptcy. Department Counsel's motion to amend the SOR (filed with the court on September 25, 2020) was granted. (Tr. 72-73) The motion is admitted into evidence as GE 7.

### **Findings of Fact**

The SOR allegations identify a past-due mortgage account (SOR 1.a), a home equity account (SOR 1.b), and two delinquent tax debts (SOR 1.c, 1.d) under the financial considerations guideline. In his July 2019 answer to the SOR, he admitted that he owed the mortgage and equity accounts, but explained how he was deceived by the misrepresentations of the SOR 1.a mortgage lender regarding the lender's decision not to execute a short-sale of his property. While Applicant claimed that he had documentation showing that the mortgage lender was fined for discriminatory practices, he provided no documentation supporting his claims. (Tr. 23; July 19, 2019, answer to SOR)

In his July 2019 answer to the SOR, Applicant described two medical conditions which required him to take off from work for a period in April 2016. Surprisingly, he testified he did not recall having any medical conditions or taking off from work in April 2016. At the hearing, when asked whether he had a health issue in 2018, Applicant remembered that he had a heart attack in January 2018, though he did not reveal the heart problem in his July 2019 answer. (Tr. 24-25)

The Government credit reports (GE 4; GE 5), Applicant's May 2018 PSI (GE 2), Applicant's April 2019 interrogatory answers (GE 3), his July 2019 answer to the SOR, and his testimony provided at the September 2020 hearing, establish the following findings of fact. According to the Government credit reports, Applicant's last payment on the SOR 1.a mortgage was in January 2015. (GE 4 at 6; GE 5 at 1) The last payment made on the SOR 1.b home equity-loan was in October 2017. (GE 5 at 1)

Applicant is 53 years. He has been married since June 1990. His wife has been employed since 2009 as a grant-review associate for a federal government agency. (AE J) He has two adult-aged sons, 29 and 25. He has been employed by a defense contractor as an auditing liaison since June 2017. (GE 2 at 6) He was previously employed by a veteran's organization for five years. Applicant's only period of unemployment since 1992 was a four-month period from May to August 2012. (GE 1 at 9-19) He served in the US Army from October 1986 to September 1989. (GE 1 at 20-21) He has held a security clearance since April 1985. (GE 1 at 38-39)

During the security investigation between September 2016 and the September 2020 hearing, Applicant provided several positions concerning the delinquent SOR 1.a mortgage. In his September 2016 e-QIP, Applicant indicated he had no delinquent debts. (GE 1 at 40-41) This omission, along with other matters relevant to Applicant's reliability and judgment, were not alleged in the SOR and cannot form an independent basis for denying or revoking his security clearance. However, I have considered the omission in assessing Applicant's credibility and as a part of the whole-person analysis. See, ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017); ISCR Case No. 12-01038 at 3 (App. Bd. June 26, 2013)

In May 2018, Applicant provided a 13-page PSI regarding the two SOR mortgages and other matters. He incorrectly claimed that he continued to make mortgage payments to the SOR 1.a lender until November 2016, when he stopped, anticipating a short-sale cancelled by the lender in early 2017 without explanation. (GE 2 at 5) See *also*, AE G at 9. Applicant stated that the subsequent foreclosure of the property was due to the cancelled short-sale and his inability to comply with the demands of the lender to return the mortgage to a current status. (GE 2 at 5, 15) On the second to the last page of the PSI, Applicant briefly mentioned that he was experiencing financial hardship in June 2015, caused by helping his brother who was struggling financially to support his family. (GE 2 at 15-16) The investigator provided Applicant an opportunity to supply additional documentation about his delinquent debts discussed in the PSI, but Applicant presented none. (GE 2 at 16)

In his April 2019 answers to interrogatories, Applicant admitted the SOR 1.a and 1.b accounts. He noted that no agreement had been made to pay either account, but stated that he was in the process of filing a Chapter 13 bankruptcy petition. (GE 3 at 2, 4)

In his July 2019 SOR answer, Applicant claimed he began falling behind on his SOR 1.a mortgage and other bills in November 2015. As noted above, no additional mortgage payments were made after January 2015. (July 2019 answer to SOR; GE 4 at 1)

At the September 2020 hearing, Applicant testified extensively about the ongoing structural problems that he was supposedly having with his SOR 1.a home and his efforts to fix the problems. Furthermore, he explained that his monthly mortgage payments were late because he purportedly used a portion of the SOR 1.a mortgage and the 1.b home-equity loan to pay for the home repairs. He testified about the layers of roof had been improperly added to the home, the leaking basement, the faulty air conditioning, and the damaged gutters that needed to be fixed. According to Applicant, it seemed there always some part of the home needing repair. (Tr. 13-17, 45) Yet, in his May 2018 PSI, he never mentioned these recurring expenses for the home he had lived in from 1999 to February 2017. See GE 2.

At the September 2020 hearing, after claiming that he continued to make late mortgage payments to the SOR 1.a lender, Applicant admitted that he stopped the \$1,600 payments shortly after January 2015. He was 47 years old at the time. (GE 1 at 4) Instead, he testified that in the first three months of 2015, he gave \$600 of the \$1,600 monthly mortgage to his destitute younger brother and his family. Applicant used the remaining \$1,000 of the mortgage to help pay the rent for his brother's family who were living with his mother-in-law. He claimed that he used the home-equity loan (SOR 1.b) to pay for additional home repairs, a student loan, and taxes. (Tr. 37-39) No documentation was furnished to corroborate the amount of money spent on his home, his family, his student loan or his taxes. Moreover, there is no documentary evidence indicating that Applicant attempted to explain his financial situation to the SOR 1.a and 1.b creditors and his intentions to resolve both debts.

Although the issue was not addressed in his May 2018 PSI (GE 2), Applicant explained for the first time in his July 2019 answer about the financial burden caused by his oldest son. He testified that he provided recurring financial support, including purchasing a car, to his oldest son and his family, and funding for his oldest son's occasional residential moves to various parts of the United States to maintain employment. (Tr. 19-20, 31-35, 37-39)

Applicant testified that his love for his family prompted him to stop paying the mortgage in early 2015 because his brother and oldest son needed financial help. He does not anticipate he will face similar circumstances in the future because his brother and oldest son have recovered from their financial difficulties. Applicant's decision to

provide financial support to family members cost him his house and peace of mind. He is getting older and is searching for greater stability in his life. (Tr. 56-58)

In July 2019, Applicant completed online credit counseling mandated by the federal bankruptcy court. No debt repayment plan was prepared. (AE B) In October 2019, Applicant completed a personal financial management course approved by federal bankruptcy laws. (AE C; Tr. 68) No additional financial counseling was mentioned by Applicant. When asked what he learned from the two financial courses, he indicated that he found out how to structure his pay. He and his wife also learned about “keeping our finances handled.” (Tr. 68) With the instruction of the credit counseling and his attorney, Applicant created a budget. He claimed that he has maintained the budget since he has been in the bankruptcy case. (Tr. 68-69, 74) He believes that he is more mindful of his spending and “watching where our money is going.” He and his wife pay closer attention to their bank accounts to guard against overspending. (Tr. 69) Applicant’s testimony provides little insight into the exact steps he has taken or adjustments he has made to watch how and where his money is spent and how he guards against overspending.

Applicant’s budget (AE J) does not have much probative value because it is a bankruptcy court form that is prepared for the bankruptcy court and trustee to determine whether Applicant has sufficient disposable income to make recurring payments under a Chapter 13 bankruptcy petition. More importantly, the budget was prepared in July 2019, shortly after the Chapter 13 petition was filed, more than a year before the September 2020 hearing. A personal budget is a financial tool that enables the debtor to account and track his earnings and expenses. It informs him whether his spending matches his financial objectives, i.e., not spending more than his earnings. Tracking his spending (which occurs by making notations every time he spends money) on a continuing basis enables him to ensure he is staying within those objectives. This tracking practice requires a personal budget to be revised and updated on a periodic basis. Applicant provided no documented evidence indicating that he tracks his spending or has made appropriate adjustments to AE J in the last year. Applicant presented no current budget. He presented no credit bureau report to support his claim of having no other financial obligations. (Tr. 45)

Applicant filed his Chapter 13 bankruptcy in July 2019. His Chapter 13 Amended Plan (March 19, 2020) lists two priority claims: (1) state agency claim amounting to \$1,426; (2) Internal Revenue Insolvency Operations and claim amounting to \$7,667. The 2017 state and federal tax claims totaling \$8,443 are income deductions for his mortgage and property taxes that Applicant lost after he was evicted from his home and moved into a rental. (Applicant viewed this eviction and move as the reason for the two-year delay in filing the Chapter 13 petition in 2019. (Tr. 24)) The two priority state and federal tax claims constitute the basis for the two additional allegations SOR 1.c and 1.d.

Applicant's Chapter 13 plan was confirmed by the bankruptcy court on May 28, 2020, after being denied on three previous occasions. The plan called for monthly payments of \$2,000 for 36 months; then \$2,556 a month for 24 months for a total period of 60 months. (AE A at 2, 3, 4, 6; AE E) The bankruptcy court submitted a payment order to Applicant's employer to deduct \$2,000 from his monthly earnings and pay the bankruptcy trustee. After subtracting Applicant's Chapter 13 planned monthly payment from his net monthly income, Applicant's net monthly income is reduced to \$195. (AE D; AE F; AE J at 25)

Applicant's Chapter 13 payment record shows that between September 2019 and September 28, 2020, he made 15 plan payments totaling \$28,000. From September 2019 to May 2020, he was current with his Chapter 13 payments. In June, July and August 2020, he paid less than the \$2,000 payment required under the plan, making him behind in payments. However, he paid more than the required plan amount with multiple payments in August and September 2020. He explained that he had to make extra monthly payments because his employer did not garnish his wages as required under the bankruptcy court's Employer Payment Order. (Applicant provided no explanation why his employer was unable to establish the garnishment.) After adding all trustee payments posted in AE K, Applicant payment plan was current as of his most recent payment on September 26, 2020. (Tr. 50, 66-68; AE F; AE J; AE K)

For about five days in October 2015, October 2016, and July 2017, Applicant and his wife vacationed in several countries in the Caribbean. The trips, which included accommodations and meals, were gifts to Applicant from his travel agent. The only cost incurred by Applicant for these trips was about \$1,000 in airfare for each trip. (Tr. 58-60) In December 2019, Applicant and his wife drove to a southern port location in the U.S., where they took a cruise to four locations in the Caribbean. The total cost of the cruise was about \$2,500. (Tr. 61)

## **Character Evidence**

On September 24, 2020, Applicant's program manager indicated by character reference that he has supervised Applicant since September 2016. The manager praised Applicant's habit of dependably completing tasks in a trustworthy manner without supervision. The manager always observed Applicant act appropriately in social situations. (AE L)

In a character reference dated September 23, 2020, an active member of the same religious faith as Applicant, and his friend for 18 years, has gotten to know Applicant well as a husband, father, grandfather, and member of the same church. She is aware of Applicant's medical struggles and financial problems caused by family members. She also mentioned his unsuccessful financial undertakings. Applicant is an active church member who ardently tries to improve himself, a sacred principle of the church. Neither the program manager nor Applicant's friend commented on Applicant's current financial habits.

## **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

(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.

A person's practice of paying his voluntarily incurred debts is a private matter until evidence reveals that he is not paying his debts in a timely fashion. Adverse evidence from credit reports can normally meet the Government's obligation of proving delinquent debts. See, e.g. ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)

The Government credit reports show that Applicant stopped paying his SOR 1.a mortgage in January 2015 and his home-equity loan in 2017. Applicant finally acknowledged this fact at the September 2020 hearing after several misleading claims during the security clearance investigation about when he stopped paying the mortgage. His inconsistent statements significantly reduce Applicant's overall credibility. His 2020 Chapter 13 Amended Bankruptcy plan includes a total of \$8,443 in delinquent unpaid state and federal taxes (SOR 1.c., 1.d). AG ¶¶ 19(a), 19(c) apply to Applicant's history of not paying his delinquent mortgage and home equity debts. AG ¶ 19(f) applies to the unpaid state and federal taxes Applicant incurred by the loss of an income deduction for his (SOR 1.a) mortgage and his property taxes.

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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Applicant encountered major financial problems in early 2015 because he voluntarily decided to provide financial aid to his brother's family, and to provide financial help to his own son. Applicant's decision to stop paying his mortgage, a



decision entirely within his control, continues to cast doubt on his reliability, trustworthiness, and judgment. Given the absence of documented evidence showing attempts to keep either creditor aware of his financial situation until at least July 2019, when he filed his Chapter 13 petition, he receives no mitigation under AG ¶ 20(a) or the first prong of AG ¶ 20(b), and negligible mitigation under the second prong of AG ¶ 20(b).

According to his July 2019 answer to the SOR, Applicant claimed medical problems in April 2016 prevented him from working. At the hearing, though he could not remember the medical issues in April 2016, but remembered his heart issue in January 2018, which he surprisingly did not cite in his July 2019 answer. Without supporting documentation of any of the medical conditions, I do not find Applicant's medical claims to be credible.

Applicant's financial counseling was mandated by the bankruptcy filed in July 2019. There is no evidence that Applicant received any additional counseling or financial education. He did not adequately explain how the financial counseling courses taught him how to structure his pay. He did not explain how he keeps a handle on his finances, and pays closer attention to his bank accounts to guard against overspending.

Applicant's budget (AE J) does not carry much probative weight for two reasons: (1) the budget is a bankruptcy form prepared to determine whether Applicant had sufficient disposable income to make regular payments under the Chapter 13 plan; and (2) the budget was created over a year before the September 2020 hearing. Tracking requires that a budget be continually revised to reflect the changes in income and spending. It is difficult to determine how Applicant's budget factored into his \$2,500 vacation in December 2019, or whether Applicant had budgeted for the earlier vacations in 2015, 2016, and 2017, before he filed his 2019 bankruptcy petition. The first section of AG ¶ 20(c) applies to Applicant's financial counseling mandated by the bankruptcy court. The second section of AG ¶ 20(c) is not applicable because of Applicant's failure to act on both debts until he filed his Chapter 13 petition in July 2019.

Whether a Chapter 13 bankruptcy plan represents a good-faith effort to satisfy overdue creditors or otherwise resolve debts, depends on the surrounding circumstances of a particular case. The mitigation Applicant receives under AG ¶ 20(d) must be weighed against the facts that the SOR was filed on June 20, 2019, and the bankruptcy petition was filed on July 26, 2019, the same day that Applicant provided his answer to the SOR. The timing of Applicant's bankruptcy petition suggests that he was responding more to the security process than to his responsibility to meet his financial obligations in a timely manner. AG ¶ 20(d) has limited application.

### **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 has been married since 1990 and has two adult-aged sons. He has been employed as an auditing liaison since June 2017. He was previously employed by a veteran's organization for five years. His only period of unemployment was a four-month period from May to August 2012. Having supervised him since 2016, the program manager commended Applicant's practice of completing projects without supervision. A friend, who has known Applicant for 18 years from their contact in the same church and contact as a friend, is aware of Applicant's medical struggles and financial problems caused by family members. Applicant served in the US Army from October 1986 to September 1989. He has held a security clearance since 1985.

Because the security clearance decision must address the totality of an applicant's conduct, both favorable and unfavorable, given the fact that Applicant has held a security clearance for 35 years, he knew or should have known that he could not summarily stop paying his mortgage in early 2015, without having a standby plan in place to ensure payment of his delinquent debts. Applicant's inconsistent statements concerning the status of the SOR 1.a creditor during the security investigation, including his September 2016 e-QIP, his May 2018 PSI, his July 2019 answer to the SOR, and at the September 20, 2020 hearing, undermine the credibility of his claim that financial problems will not recur. Viewing the evidence from a commonsense point of view, Applicant has not mitigated the security concerns arising from the guideline for financial considerations.

### **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.d:	Against 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