



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 20-03373
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his finances. The allegation that he intended to falsify his most recent security clearance application was not established. His request for a clearance is granted.

Statement of the Case

On January 14, 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. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant’s request for a security clearance.

On December 13, 2021, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for personal conduct (Guideline E) and financial considerations (Guideline F). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

Applicant timely responded to the SOR (Answer) and asked for a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 25, 2022, and I scheduled a hearing to be held on December 6, 2022, via video teleconferencing. The parties appeared as scheduled, and I received a transcript of the hearing (Tr.) on December 14, 2022. Applicant testified in his own behalf but did not submit any documentary evidence. I held the record open after the hearing to receive from Applicant additional relevant information. He subsequently submitted documents included in the record as Applicant Exhibits (AX) A – I. Department Counsel proffered Government Exhibits (GX) 1 – 6, as well as a copy of its exhibit list identified as Hearing Exhibit (HX) 1. No objections to admissibility were raised by either party and all proffered exhibits were admitted. The record closed on December 8, 2022.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owed \$57,000 for 12 delinquent or past-due debts (SOR 1.a – 1.i). In response, Applicant denied SOR 1.f – 1.h, and 1.j – 1.i. He admitted the remaining Guideline F allegations, all without comment or explanation.

Under Guideline E, the SOR alleged that Applicant deliberately made a false official statement by answering “no” to questions about his past-due debts in e-QIP Section 26 (Financial Record – Delinquency Involving Routine Accounts) (SOR 2.a). In response, he admitted this allegation without comment. However, at hearing, he denied any intent to make a false statement. (Tr. 10 – 11) Accordingly, his answer to SOR 2.a is entered as a denial. In addition to the facts established by Applicant’s admissions, I make the following findings of relevant fact.

Applicant is a 43-year-old employee of a defense contractor, where he has worked since June 2019. In July 1998, he enlisted in the U.S. Marine Corps. He served until October 2018, when he retired as a master sergeant. His service included deployments to combat zones between 2003 and 2012, as well as other overseas assignments. After leaving active duty, he was unemployed until he was hired by his current employer. Before he completed his military service, he completed his studies for a bachelor’s degree in business management. (GX 1; Tr. 6, 32)

Applicant was married from April 2000 until divorcing in February 2012. He remarried in July 2015 but divorced again in December 2018. He and his first wife have three minor children together. He also has another minor child from outside either marriage. (GX 1; Tr. 35)

In May 2009, Applicant submitted a security clearance application (SCA) to renew his eligibility for a security clearance in connection with his military duties. The ensuing background investigation revealed that he owed about \$22,000 for 23 delinquent or past-due debts. In January 2011, the Department of Defense Consolidated Adjudications Facility (DOD CAF) revoked his clearance; however, Applicant appealed that decision, explaining that his financial problems arose from circumstances beyond his control. He also provided information showing that he acted responsibly in the face of those circumstances by obtaining financial counseling and establishing a debt repayment plan. In May 2011, his clearance was reinstated with the condition that he continue to meet his financial obligations and avoid incurring any new delinquent debts. (GX 3; Tr. 20, 36 – 37)

On March 24, 2020, pursuant to Applicant's most recent application for clearance in January 2020 (GX 1), government investigators obtained a credit report (GX 4) that documented all of the debts alleged in the SOR. Applicant had not disclosed any of those debts as required in Section 26 of his e-QIP. On April 6, 2020, a government investigator conducted a personal subject interview (PSI) of Applicant that covered, in relevant part, his finances. During the interview, the investigator conducted "routine financial related questioning," in response to which Applicant volunteered that he had one delinquent debt that he had paid off. He was then confronted with the information contained in the March 2020 credit report. Applicant has denied any intent to falsify his omission of adverse financial information from his most recent e-QIP (or in the PSI, for that matter). At his hearing, he explained in a credible way that he thought the Section 26 question on his most recent e-QIP, as well as the investigator's questioning, sought information about debts in addition to those he either had previously disclosed on another SCA he submitted in 2015 or 2016 (not part of this record), or that he knew were in his credit history and known to investigators. (Answer; GX 1; GX 2; Tr. 10 – 11, 40 – 48)

As to the specific allegations of debt in the SOR, the record establishes the following:

Applicant disputed the amount of the \$20,170 debt at SOR 1.a, claiming he owed only about \$7,000. After the PSI in 2020, he negotiated with the creditor and settled the debt. Applicant further claimed that he even received a \$3,000 refund as part of the settlement. The debt does not appear on any credit report after March 2020. This debt is resolved. (Answer; GX 2; GX 4 – 6; Tr. 61 – 64)

A credit report obtained on February 18, 2022, shows that the debt at SOR 1.b is now being paid as required. It is a line of credit from Applicant's credit union for which he did not make payments between February and June 2020. As shown in his post-hearing

submissions, he set up a repayment plan and is making \$242 payments each month. His post-hearing submissions also established that he resolved a separate account with the same creditor through monthly \$89 payments. The debt at SOR 1.b is resolved. (GX 4 – 6; AX G; AX H; Tr. 64 – 65)

Available information about the SOR debts shows that Applicant has not taken any action to resolve the \$10,924 debt at SOR 1.c. He did not provide any information about this debt. It is not resolved. (Answer; Tr. 65 – 66)

Applicant had four Military Star credit accounts while he was in the military that were delinquent when he retired. (SOR 1.d and SOR 1.i – 1.k) He testified that his retired pay was garnished at a monthly rate of \$700 between September 2020 and April 2022. He claims those debts have been satisfied and provided credit report information listing them as paid collection accounts. Notwithstanding that these accounts were paid through involuntary garnishments, they are nonetheless resolved. (AX A; AX I; Tr. 66 – 67)

As to the debts at SOR 1.e – 1.h and 1.i, Applicant denied those allegations and claims to have paid off those debts around the time he was applying for a loan to buy his house in late 2019 and early 2020. He has owned his home and paid the mortgage as required since February 2020. Only one of those debts (SOR 1.i for \$114) appears in any of the credit reports after March 2020. I conclude that these debts are resolved. (Answer; GX 1; GX 2; GX 4 – 6)

Applicant has a long history of financial problems manifested by multiple past-due or delinquent debts. The debts that were the subject of the information presented in GX 3, a 2010 adjudication of his clearance eligibility, arose mainly from the untimely death of his father. That event resulted in financial hardship because Applicant had to take custody of his two younger brothers. Thereafter, his mother died, and both of his brothers died. These events occurred as his first marriage was ending. When he divorced his first wife in 2012, he incurred a monthly child support obligation of \$1,600, which he paid as an allotment from his active duty pay. In 2012, he also incurred a monthly child support obligation of \$645 for a child born to a different woman after his first divorce. At the time, he was a staff sergeant (E-6) and the \$2,245 total child support payment equated to about 75 percent of his monthly pay. He also incurred travel expenses to see his children who lived, at that time, on the opposite coast of the United States from where he was stationed. (GX 1; GX 2; Tr. 27 – 32, 34 – 35, 48, 80)

In connection with the 2010 clearance adjudication, Applicant obtained professional debt-resolution assistance and established a debt repayment plan starting in September 2010 at \$290 a month. When Applicant remarried in July 2015, his new wife's income helped him further improve his finances and his money management practices. However, he again had difficulty paying his bills when a few months after he left the Marine Corps, his second marriage ended in divorce, and he was unemployed from November 2018 until going to work for his current employer in June 2019. He briefly

fell behind in his child support payments and he accrued new unpaid debts. (GX 3; GX 4; Tr. 36 – 40)

In early 2021, Applicant's first wife and their children moved in with him. This has reduced his monthly child support obligation to \$645 for his one child from outside his marriages. Applicant brings home about \$5,000 each month in regular pay. He also receives \$2,300 in military retired pay and \$4,100 in monthly disability benefits from the Department of Veterans Affairs (VA). In about June 2022, he started a trucking and delivery business under the auspices of a state small business program that provides funding and business management resources. Applicant's business appears to be doing well as he testified he had a profit of nearly \$30,000 in November 2022. To his credit, he is not yet taking income from the business, choosing instead to redirect his profits to paying company debt and growing his business capabilities. As to his personal finances, Applicant has not incurred any new past-due or delinquent debts. He meets all of his current regular obligations, and after expenses each month, he has about \$5,000 remaining, most of which he directs to his business. (Tr. 33, 49 – 60, 69 – 77)

At hearing, Department Counsel asked Applicant about more recent debts reflected in the February 2022 credit report admitted as GX 6. Applicant explained those accounts pertain to his new business. For example, he has several loans or credit accounts opened to procure vehicles for his business. None of those accounts are listed as past due or delinquent. He also presented information post-hearing that shows he recently has paid off an auto loan as required. (AX B; Tr. 69 – 70)

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 (1988))

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. (*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. (*Egan* at 531; see AG ¶ 2(b))

Analysis

Financial Considerations

The Government met its burden of producing sufficient, reliable information to support the SOR allegations that Applicant accrued significant past-due or delinquent debts. This information reasonably raises a security concern about Applicant's finances that is articulated at AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Available information also requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The mitigating condition at AG ¶ 20(a) does not apply. Applicant's debts are recent, in that, they continued unaddressed until after his PSI in April 2020. They are multiple and his largest remaining debt (SOR 1.c) remains unresolved without much explanation.

AG ¶ 20(b) applies. As part of the 2010 adjudication of his financial problems, Applicant resolved his earlier debts through a debt repayment plan. After 2012, more financial problems arose while he was in the military and incurred significant child support obligations that equated to most of his monthly income. He also had to care for two siblings after his parents died, and he went through another divorce. After retiring from the military, he was unemployed for several months. After his first wife and their children moved in with him, he was able to resolve most of his debts and reduce his child support obligation, which was still a large part of his monthly expenses. Since then, he has resolved most of his debts, and he started a small business that appears in its early stages to be thriving. In short, available information shows that Applicant has acted responsibly in the face of his earlier circumstances.

AG ¶ 20(c) applies, in part, based on Applicant's earlier engagement with a debt resolution company, and, in part, through his use of a small business program that is guiding him through the startup of his business. Rather than take unnecessary risks to earn extra income, it appears Applicant is approaching that endeavor methodically and

conservatively; for example, by deferring income in favor of reinvesting profits in the business.

AG ¶ 20(d) applies to the debts at SOR 1.a, 1.b, 1.d, 1.e – 1.h, and 1.i. The Military Star accounts are resolved; however, that was accomplished through involuntary garnishment of Applicant's military retired pay. Although SOR 1.c remains unresolved, I conclude it is likely he will address it as his business grows.

In addition to the documents supporting the SOR allegations, the Government presented information in GX 3 that was not alleged. Also discussed at hearing were recent debts Applicant has accrued. I have not considered that information as possibly disqualifying under this guideline. Nonetheless, it is probative of the applicability of these mitigating conditions. I also considered the information in Applicant's post-hearing submissions, some of which does not address any of the debts alleged in the SOR, but may have some bearing on my assessment of Applicant's financial condition. The foregoing shows that Applicant had financial problems in 2010, which reasonably concerns the Government in view of his more recent debts; however, it also shows he took action to correct those problems. Applicant established that he has addressed most of the debts alleged in the SOR. As to the recent debts about which Department Counsel examined Applicant at hearing, that information shows that they are associated with his business, and he is meeting those obligations as required.

Overall, Applicant's current finances are sound and do not reflect adversely on his judgment or reliability. I conclude Applicant has mitigated the security concerns established by the Government's information.

Personal Conduct

The security concern addressed through this guideline is articulated at AG ¶ 15 as follows:

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:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The SOR alleged that Applicant intentionally provided false answers to the e-QIP Section 26 questions about his debts. It is not disputed that he did not list in his e-QIP any of the past-due debts alleged in the SOR. AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities) requires that, to be disqualifying, it would have to be shown that his omissions were intentional.

Applicant denied SOR 2.a. Accordingly, the burden of establishing that he intended to mislead by his negative answers remained with the Government (see Directive, E3.1.14). The Government's information showed that Applicant knew he had delinquent debts within the meaning of the e-QIP questions at issue, and that he had previously completed a similar security clearance application. Based on this, the Government's position was that he knew or should have known what information he was required to disclose, and that he knowingly decided to withhold it. In response, Applicant's testimony regarding his intent showed he thought the Government already knew about his debts because he had disclosed them on an earlier clearance application in 2015 or 2016. Thus, he thought he only had to disclose new delinquencies, which he believed did not exist.

As with the rest of Applicant's testimony, I found credible his claims that he did not intend to falsify his answers or otherwise mislead the Government about his financial problems. Without that intent, his e-QIP answers are not disqualifying, and AG ¶ 16(a) is not established. The security concerns alleged by the Government under this guideline are not established.

I also have considered the potential application of the whole-person factors at ¶ 2(d). I note that his circumstances have improved, both personally and financially. I also have considered his honorable service in the Marines over 20 years. Available information shows that, despite the continued presence of an unresolved debt, Applicant has acted responsibly in resolving his delinquent debts and improving his finances overall. The record evidence as a whole supports a fair and commonsense decision in favor of Applicant.

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: FOR APPLICANT

Subparagraphs 1.a – 1.l: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge