



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



In the matter of:	)	
	)	
	)	ADP Case No. 22-01353
	)	
Applicant for Security Clearance	)	

**Appearances**

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

05/19/2023

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility to occupy an automated data processing (ADP) position is granted.

**Statement of the Case**

On September 7, 2022, Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with national security to grant eligibility to occupy an automated data processing (ADP) position. DCSA CAS took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On September 19, 2022, Applicant answered the SOR, admitting the allegations and requesting a decision on the record on file, rather than a hearing. On October 31, 2022, Department Counsel prepared a File of Relevant Material (FORM) setting forth the Government’s position and the supporting exhibits. On

November 2, 2022, Applicant was provided a copy of the FORM, and was given 30 days to file a response. He did not file a response by the deadline, whereupon on December 15, 2022, the case was assigned to me.

### **Preliminary Ruling**

On April 23, 2023, Applicant provided a two-page response to the FORM with four attachments to Department Counsel. On April 26, 2023, Department Counsel forwarded a copy of the response to me and noted that he had no objection to their post-deadline inclusion into the record. Accordingly, I will treat Applicant's submission as a motion to extend the record, and grant it, including the response and the four attachments in the record.

### **Findings of Fact**

Applicant is a 47-year-old man with three children, one of whom is an adult. He served in the U.S. Marine Corps from 1999 through 2007, after which he was honorably discharged. He also served in the Army National Guard from 2008 to 2010. He earned a bachelor's degree in 2015 and a master's degree in 2016. (Item 2 at 8-9)

The SOR alleges that Applicant has six delinquent debts, totaling approximately \$51,140. Applicant admits incurring these debts. He attributes his financial problems to the costs related to divorce proceedings in 2018, and the income reduction that he experienced after the divorce was finalized. (Item 2 at 18; Answer at 2)

Subparagraph 1.a, totaling \$24,747, is the deficiency remaining from an automobile that was repossessed in January 2018. When Applicant began falling behind on the payments, he contacted the creditor to request a loan modification. The creditor rejected the request, prompting Applicant to return the car to the dealer. (Item 5 at 2) In April 2023, Applicant contacted the creditor to develop a payment plan. (Response, Attachment 1) The creditor rejected the request, informing him that his ex-wife had included the debt in a bankruptcy petition, and that federal bankruptcy law prohibited the creditor from accepting payments on the account pending the bankruptcy petition. (Response at 1)

The debt alleged in subparagraph 1.b, totaling \$1,702, is a credit card delinquency. (Answer at 2) Applicant satisfied this account on April 22, 2023. (Response at 4)

The debt alleged in subparagraph 1.c, totaling \$1,306 is a credit card account. On April 23, 2023, Applicant satisfied this account. (Response at 3)

The debt alleged in subparagraph 1.d, totaling \$684, is a delinquent cell phone account. (Answer at 2) Applicant satisfied it. (Answer at 3)

The debt alleged in subparagraph 1.e, totaling \$18,590, is the deficiency from a car that was repossessed at or about the time Applicant and his wife divorced. (Answer at 1)

Per a separation agreement incorporated into the divorce decree, Applicant's ex-wife agreed to assume the financial liability for this vehicle. (Answer at 13)

The debt alleged in subparagraph 1.f, totaling \$4,111, is the deficiency remaining from an automobile that was purchased in 2018 and repossessed in 2020. (Item 5 at 3) Applicant paid the debt, as agreed, during the first few years after its purchase. (Item 4 at 6) Then he stopped paying after a dispute with the dealer over warranty coverage related to some mechanical difficulties that he was experiencing. (Item 5 at 3) On April 19, 2023, Applicant negotiated a settlement, reducing the balance to \$969, and satisfied the account. (Response at 2)

### **Policies**

When evaluating an applicant's suitability for access to sensitive information, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to sensitive information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as 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 ¶ 1(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## **Analysis**

### **Guideline F: Financial Considerations**

Under this concern, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting’s financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

Applicant’s ex-wife has included the debt, alleged in subparagraph 1.a, in a bankruptcy filing, negating the creditor’s ability to accept payments towards its satisfaction, and she has taken responsibility for the debt alleged in subparagraph 1.e under a settlement agreement, leaving Applicant only responsible for the debts alleged in subparagraphs 1.b through 1.d, and 1.f. He satisfied all of these remaining debts.

Although Applicant certainly could have documented his attempts at satisfying these debts earlier, he has clearly established that he has no current financial problems. Moreover, his payment of all the delinquent debts, for which he was responsible, bolsters the credibility of his contention that his financial problems were a temporary aberration caused by the income reduction he experienced after his divorce. I conclude that all of the mitigating conditions, as set forth above, are applicable. Applicant has mitigated the financial considerations security concerns.

## **Whole-Person Concept**

Given the circumstances surrounding Applicant's incurrence of the delinquent debt, and his satisfaction of the debts for which he remains responsible, I conclude Applicant has mitigated the security concerns.

## **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:	FOR APPLICANT
Subparagraph 1.a – 1.f:	For Applicant

## **Conclusion**

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a trustworthiness position. Access to sensitive information is granted.

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Marc E. Curry  
Administrative Judge