



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 22-02006
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

07/07/2023

---

**Decision**

---

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his finances or about his personal conduct. His request for a security clearance is denied.

**Statement of the Case**

On March 3, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 Department of Defense 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 12, 2022, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for financial considerations (Guideline F) and personal conduct (Guideline E). The DOD CAF issued the SOR pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective 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). I was assigned this case on April 27, 2023. On June 5, 2023, I convened a hearing by video teleconferencing. The parties appeared as scheduled, and I received a transcript of the hearing (Tr.) on June 14, 2023.

Department Counsel proffered Government Exhibits (GX) 1 – 6, as well as a list of Government exhibits and a copy of a discovery letter dated March 17, 2023, which are included as Hearing Exhibits (HX) 1 and 2, respectively.

Applicant testified in his own behalf, but he did not present any documentary evidence. I held the record open after the hearing to receive additional relevant information. Applicant timely submitted three exhibits identified as AX A - C. No objections to admissibility were raised by either party and all proffered exhibits were admitted. The record closed on June 13, 2023, when Department Counsel waived objections to Applicant's post-hearing submissions.

### **Findings of Fact**

Under Guideline F, the SOR alleged that Applicant owed \$80,535 for two delinquent federally guaranteed student loan accounts (SOR 1.a and 1.b); and that he owed \$7,330 for two delinquent commercial credit accounts (SOR 1.c and 1.d). In response, Applicant admitted each allegation, with explanations, and he provided documents in support of his responses. (Answer)

Under Guideline E, SOR 2.a alleged that Applicant intentionally made a false official statement in his March 2022 e-QIP. Specifically, it was alleged that he deliberately omitted from his e-QIP the debts alleged at SOR 1.a – 1.d by answering “No” to questions under Section 26 (Financial Record) that required him to disclose whether, in the preceding seven years, he had debts more than 120 days past due.

Applicant admitted SOR 2.a, with explanation. However, in reviewing the pleadings at hearing, Applicant denied that he intentionally made a false statement through his e-QIP answers. Accordingly, I entered his response as a denial, thus making the question

of his intent to falsify a controverted question of fact. (Tr. 13 – 15; see *also* Directive, Section E3.1.14) In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 39-year-old employee of a defense contractor, for whom he has worked since March 2021. He previously held a security clearance while working for a federal contractor between September 2008 and September 2016. He applied for that clearance through an e-QIP he submitted on June 3, 2010. (GX 1; GX 2)

Applicant graduated from college in August 2008. He funded his tuition through the student loans addressed in SOR 1.a and 1.b. Thereafter, he moved to State A, where, as noted above, he worked as a federal contractor. His annual salary ranged between \$35,000 and \$55,000. In his 2010 e-QIP, Applicant disclosed that he was or had been delinquent on three commercial credit accounts (not alleged in the SOR), and that he was delinquent or past due on his student loans, which then totaled about \$51,000. The commercial accounts appear to have been paid off. As to his student loans, after Applicant's income tax refund was diverted toward those accounts in 2009, he set up a repayment plan and made monthly payments of \$387. He managed to make those payments for about a year, and he has not made a regular payment on his student loans since 2010. (GX 2; GX 6; Tr. 49 – 52, 55 – 56, 61 – 64)

Applicant next acted on his student loans in January 2023, when he contacted a credit repair and debt negotiation company. With his Answer, he provided information that shows the credit repair firm has contacted his creditors. That information does not show that he is making any payments on his student loans or other debts. Applicant testified that he pays that firm \$100 monthly for their services. On June 5, 2023, Applicant enrolled in a debt repayment plan that requires him to make bi-weekly payments of \$135 to satisfy the debts at SOR 1.c and 1.d, as well as three other debts not alleged in the SOR, totaling \$17,081. The plan would resolve those debts in four years. (Answer; AX A; AX B; Tr. 56 – 59)

On June 9, 2023, Applicant enrolled in a student loan rehabilitation program ("Fresh Start Transfer") to resolve five student loan accounts totaling \$82,242. Available information reflects that he has asked for his payments to be based on his income; however, the record does not reflect a monthly payment or schedule of payments. (AX C)

Applicant attributes his current financial problems to an extended period of unemployment. In 2016, he left his federal contractor employment in State A and moved to State B to assist his sister and her children. His sister was seriously ill and could not afford in-home care. After Applicant used up his savings to support himself, he opened the credit card accounts alleged at SOR 1.c and 1.d. Additionally, his sister and parents helped him financially from time to time. Applicant returned to the workforce in October 2019, when he took an information technology (IT) position at a local hospital. He earned about \$17 hourly before taking a job with the contractor sponsoring his current request for clearance in March 2021. In February 2023, Applicant was suspended without pay

from his current employment pending the outcome of this adjudication. (Answer; GX 1; GX 2; Tr. 38 – 47, 61 – 64)

Applicant did not disclose any of his delinquent debts when he submitted his e-QIP in March 2022. He discussed his financial problems, including his student loans, with a government investigator in an April 2022 personal subject interview (PSI). He initially denied that he had any delinquent debts until the investigator confronted him with credit report information about those debts. In his hearing testimony, he acknowledged that he was familiar with the information required in response to e-QIP questions by virtue of the fact that he had submitted a similar questionnaire in 2010. He further admitted that he intentionally answered “No” to the e-QIP because he did not have current information about his student loans and other debts. (GX 1; GX 2; GX 3; Tr. 48 – 49, 61 – 64, 68 – 69)

Applicant and his wife have been married since June 2022. They have no children together; however, Applicant has a young child from a previous relationship for whom he pays about \$425 monthly in child support. His wife earns about \$70,000 annually, and his brother has been covering the aforementioned child support payments since November 2022. Additionally, Applicant’s parents have been paying his half of their rent. Applicant and his wife do not manage their monthly finances according to a structured budget, and because Applicant’s income tax refunds are diverted to his student loan accounts, they file their taxes separately. Applicant is current on all of his income tax reporting and payment obligations. (Tr. 37, 66 – 68, 74 – 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 (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 AG ¶ 20 mitigating conditions that pertain to these facts and circumstances:

(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.

AG ¶ 20(a) does not apply. Applicant's debts are multiple, and by virtue of the fact none of them are resolved, they are recent and ongoing.

As to AG ¶¶ 20(b) and 20(d), Applicant asserts his financial troubles stem from his extended unemployment between 2016 and 2019. Standing by itself, that circumstance would require application of the first prong of this mitigating condition. However, as documented in his first e-QIP, Applicant has had financial problems since he graduated from college in 2008. He only made regular student loan payments for about a year in 2009 and 2010 through a repayment plan he established after his income tax refund was diverted in 2009. Between 2010 and 2023, he took no identifiable action to address any of his debts, and it was only after his hearing that he established a repayment plan for his commercial debts and entered a student loan rehabilitation program for those debts. These are admirable steps and should be encouraged; however, he did not timely act to address any of his debts, even after discussing them with an investigator as a security issue in April 2022. The foregoing does not support a finding that he acted responsibly in the face of any unforeseen circumstances or that he has engaged in a good-faith effort to repay his debts. AG ¶¶ 20(b) and 20(d) do not apply.

AG ¶ 20(c) applies, but only in a limited way. At a cost of \$100 a month, Applicant engaged the services of a firm that offers to challenge entries in one's credit history. It may also be that this firm provides credit and financial counseling services, but he did not present any information to that effect. On balance, Applicant did not establish any track record of payment or other efforts to resolve his debts. Nor did he show how his personal finances are now being managed in a way that would preclude a recurrence of the security concerns identified in the Government's information. Those concerns remain unresolved.

## **Personal Conduct**

The security concern addressed under this guideline is stated at AG ¶ 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:

(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.

Applicant did not disclose in his e-QIP, as required by the questions in Section 26 (Financial Record), the debts alleged at SOR 1.a – 1.d. To be disqualifying, such an omission must be an intentional attempt to deceive the government about information relevant and material to its interest in ensuring the suitability of persons with security clearances. A simple mistake or misunderstanding resulting in an incorrect answer is not sufficient. In response to SOR 2.a, Applicant denied having such intent. Thus, it fell to the Government to provide sufficient information to support the allegation and prove intent. Specifically, at issue is whether the record supports application of the disqualifying condition at 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.

I conclude it does. Applicant's completion of an in e-QIP in 2010, in which he answered "yes" to the same questions and provided information about the same student loan delinquencies at issue here, shows that he understood what information was required of him. Further, at his hearing, he testified that he knew he should have disclosed his debts but deliberately answered "No" because he did not have detailed information about his debts. Although it was not alleged in the SOR, I also note that Applicant may have tried to conceal his debts during his April 2022 PSI. Available information shows he had to be confronted with the information about his debts before he acknowledged he owed them. All of the information in this record probative of his state of mind when he submitted his 2022 e-QIP supports application of AG ¶ 16(a).

I also considered the following AG ¶ 17 mitigating conditions:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so 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, or good judgment.

Applicant did not try to correct his omissions before being confronted with the information about his debts in his PSI. He also did not establish that he omitted his debts pursuant to any qualified advice. Finally, this recent instance of deliberate omission undermines confidence that Applicant will act in the best interests of the government in protecting sensitive information. Accordingly, it cannot be viewed as minor and it reflects adversely on Applicant's trustworthiness and judgment. All of the foregoing precludes application of AG ¶¶ 16(a), 16(b), and 16(c). Applicant has not mitigated the security concerns about his personal conduct.

I also have considered the potential application of the whole-person factors at ¶ 2(d). The record evidence as a whole leaves unresolved the doubts about Applicant's suitability for a clearance that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications,



those remaining doubts must be resolved against the granting of 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 – 1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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