



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



In the matter of: )  
)  
) ISCR Case No. 11-15021  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq. Department Counsel  
For Applicant: *Pro se*

09/04/2013

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns generated by the delinquent debts that he incurred after a job loss and a marital separation. Also, he did not falsify his security clearance application by omitting student loan debts in response to a question that required the disclosure of delinquent debt. Clearance is granted.

**Statement of the Case**

On April 3, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On April 27, 2013, Applicant answered the SOR, admitting the allegations in Paragraph 1 and denying the allegations in Paragraph 2. He requested a hearing. The case was assigned to me on June 18, 2013. A notice of hearing was issued scheduling the case for July 11, 2013. Applicant then moved for a continuance. Department Counsel did not object, and I granted the motion, continuing the case to August 5, 2013. At the hearing, I received five Government exhibits (GE 1-5), 27 Applicant exhibits (AE A - AA), and Applicant's testimony. On August 15, 2013, Applicant submitted an additional exhibit that I marked as AE BB. Department Counsel had no objection to its admissibility, therefore, I admitted it and incorporated it into the record. DOHA received the transcript (Tr.) on August 14, 2013.

### **Findings of Fact**

Applicant is a 60-year-old man with five children ranging in age from 16 to 37. The youngest three children are from his current wife. The second oldest child is from a previous relationship, and the oldest child is from his first marriage, which ended in divorce in 1978.

Applicant earned a bachelor's degree in accounting in 1975, a master's of business degree in 2007, and a master's degree in human resources in 2010. He also has a graduate certificate in program management. (Tr. 68; GE 1 at 6)

Applicant paid child support for his second oldest child through a child support enforcement order that the child's mother obtained in the early 1990s. Under the order, \$500 monthly was deducted from Applicant's pay. In the late 1990s, a routine driver's license check that a police officer conducted after stopping Applicant for speeding revealed that Applicant was delinquent on his child support payments. Later, Applicant researched this problem and discovered that his employer for years had been deducting money from his pay, but had not been forwarding it to the child support authority. (AE 5 at 15) By approximately 2000, the delinquency totalled \$23,000. (GE 5 at 6)

Since then, Applicant has been making monthly payments of approximately \$560 toward the delinquency. (AE J) By July 2013, Applicant had satisfied the delinquency. He no longer has any child support responsibility for this daughter. (AE J at 43; AE BB)

Applicant's career has generally been successful. After graduating from college, he steadily climbed the corporate ladder, working in various management positions. (Tr. 71) He held a security clearance from 1975 to 2002. (Tr. 158-159)

In 2005, Applicant was laid off. Applicant was not unemployed for a significant period of time afterwards. However, his annual income initially decreased by approximately \$30,000. (Tr. 120) Moreover, he often had to work up to three jobs to make ends meet. (Tr. 75) Applicant recognized that working at this pace was unsustainable. However, he faced a quandary. The accounting profession was not as lucrative as it was when Applicant finished college, and his employment marketability was limited by his age. (Tr. 155)

Consequently, Applicant decided to return to school. Between 2007 and 2011, he earned two master's degrees and a graduate certificate, as described above. Applicant's additional education was expensive. Together, his educational costs were nearly \$200,000. (Answer at 2) Applicant financed his education through multiple student loans, as set forth in SOR subparagraphs 1.b through 1.p.

In 2009, Applicant's wife left him. Applicant maintained physical custody of their children. Although his estranged wife was required to pay child support, she typically paid monthly approximately a third of what was owed. (Tr. 85)

The combination of underemployment and marital separation caused Applicant to begin falling behind on his debts. By early 2010 his car had been repossessed, and the credit card account, as alleged in SOR subparagraph 1.q was delinquent. (AE 5 at 15, 18)

Applicant's student loans total approximately \$150,000. They include debts listed in SOR subparagraphs 1.b through 1.g owed to one creditor, debts owed to another creditor, listed in SOR subparagraphs 1.h through 1.p, and a debt owed to a student loan creditor that is unlisted, totalling approximately \$24,000. (AE D, I, K, P) In August 2010, Applicant began applying for deferment status. By December 2010, all of Applicant's student loans were in deferment. (AE K, P)

Applicant's credit card delinquency, as listed in SOR subparagraph 1.p, totals \$380. (AE F) The deficiency that he owes on the repossessed car totals \$15,000, as listed in SOR subparagraph 1.r.

After Applicant obtained his current job in March 2011, he began contacting creditors to address his debts. He initially satisfied several debts, unlisted in the SOR, totalling between four thousand and six thousand dollars. (Tr. 130-132; GE 4 at 3) By April 2012, he had finished satisfying a federal tax lien, also unlisted in the SOR, stemming from an audit of his 2000 income tax return. (AE AA). The tax lien totalled approximately \$23,000. (AE AA)

In April 2013, Applicant consolidated the student loan debts listed in SOR subparagraphs 1.b through 1.g into one account. (AE K at 2) He has negotiated a deal in which he is going to make monthly \$400 payments beginning in November 2013. (Tr. 93; AE K at 2) Currently, he owes approximately \$84,000. (AE E)

Also, in April 2013, Applicant began making payments toward the satisfaction of the student loan unlisted in the SOR. Since then, he has been paying \$256 per month. (AE Q) The balance is \$23,179. (AE Q at 1)

In July 2013, Applicant negotiated an agreement with the student loan creditor for the debts listed in SOR subparagraphs 1.h through 1.p. (AE L at 3) Under the agreement, the accounts were consolidated, and Applicant will pay the creditor \$484

monthly beginning on August 30, 2013. (AE L at 3; Tr. 97) These accounts remain in forbearance. (Tr. 59)

In March 2013, Applicant contacted the creditor listed in SOR subparagraph 1.q, and scheduled a payment plan. Consistent with the plan, he began paying this debt in July 2013, with a \$70 payment. (AE M at 2; Tr. 61) Under the plan, Applicant will have satisfied this debt by December 2013. (AE M at 1)

The deficiency on Applicant's delinquent car loan totals approximately \$15,000. Applicant has developed a payment plan under which he will initially pay \$100 per month beginning September 2013, then increase the payments as he satisfied other debts. (AE N; Answer at 5).

Applicant attended a financial counseling course. He completed it in July 2013. (AE S)

Applicant will be receiving a pay increase in January 2014. Applicant estimates that it will equal \$145 per month. (AE W at 4) He intends to apply this money to satisfy his debts. (AE W at 4) Applicant has approximately \$6,000 invested in a 401k plan. (Tr. 128, 130)

Applicant completed an Electronics Questionnaires for Investigations Processing (e-QIP) in April 2011. Section 26 requires applicants to disclose whether they have ever been 180 days delinquent on any debts, or whether they are currently overdue on any federal debts. (GE 1 at 34) Applicant did not list the student loans set forth in SOR subparagraphs 1.b through 1.p in response to Section 26. He contends that these debts were in deferment when he completed the e-QIP. (Tr. 64-65)

The record evidence contains four credit reports. (GE 2, GE 4, GE 5 at 76-102, and AE P) AE P indicates that Applicant's student loan debts were in deferment as of January 2011. (AE P at 3-17) GE 2 and GE 5, dated May 5, 2011 and October 2012 respectively, indicate that Applicant had no delinquent student loan accounts when he completed the e-QIP. (GE 2 at 11-15; GE 5 at 85-86 and 90-91) GE 5, dated January 29, 2013, indicates that Applicant's student loans were reported delinquent between November and December 2012, but it does not reference the status of the student loans in April 2011 when Applicant completed the application. I find that Applicant's student loan debts were in deferment when he completed the e-QIP in April 2011, and that the record is inconclusive as to whether any of these student loans had ever been more than 180 days delinquent before Applicant obtained deferment status for them.

Applicant is well-respected on the job and in his community. According to the program manager on a contract to which Applicant was assigned, Applicant brings "a high level of technical expertise, professionalism, and enthusiasm" to the job. (AE R at 9) A coworker characterized Applicant as a seasoned professional who has "earned the trust of his colleagues both contractor and government personnel." (AE R at 1)

According to his next-door neighbor, he is an outstanding neighbor who is “generous with his time and support,” and often provides “sage” child-rearing advice. (AE R at 8)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), 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 ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “failure or inability 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 information” (AG ¶ 18). Applicant’s delinquent debts trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant's child support accrued because his employer mismanaged the wage garnishment, deducting the money from Applicant's account, but not forwarding it to the child support enforcement agency. Applicant is not totally without fault for this problem occurring. Any communication between Applicant and his child's mother could have corrected this problem years before the debt became excessive. Nevertheless, after discovering the problem, Applicant corrected it, and the debt is now satisfied. Therefore, I resolve SOR subparagraph 1.a in Applicant's favor.

Applicant's financial problems began shortly after he was laid off in 2005 and accelerated after his wife left him in 2009. Although the job loss resulted in drastically reduced income, he managed to make ends meet over the next three to four years. He could not, however, sustain the blow to his finances posed by the job loss combined with the loss of income caused by his marital separation.

Approximately 90 percent of Applicant's debts constitute student loans. In applying for these loans, Applicant thoughtfully assessed his career and concluded that as an underemployed, middle-aged man skilled in a profession that was no longer lucrative, his salary would probably never return to the pre-2005 level unless he obtained more education. Consequently, he decided to return to school and earn two additional degrees. This calculated gamble paid off, as Applicant is now earning more than he did in 2005. Also, the additional income from his new career has enabled him to develop a payment plan to satisfy his debts. Under the plan, he has begun making paying a student loan that is not listed in the SOR, and will begin paying both student loan creditors listed in the SOR within the next three months.

Applicant has attended financial counseling. His payment plan appears to have been meticulously prepared, and includes a comprehensive budget and a time line for satisfying all of his debts. Applicant currently is making payments on only one SOR debt, the credit card account listed in subparagraph 1.q. However, he has satisfied the child support delinquency listed in subparagraph 1.a, and has made between four thousand and six thousand dollars of payments to debts that were unlisted in the SOR. Given the circumstances that led to Applicant's financial difficulties, and the steps he has taken to remedy them since obtaining his current job, I am confident that he will adhere to the payment plan, as projected. I conclude that all of the mitigating conditions, as listed above, apply.

### **Guideline E, Personal Conduct**

The security concern under this guideline is 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The student loans listed in subparagraphs 1.b through 1.p were not delinquent when Applicant completed the security clearance application. Instead, they were in deferment. Also, the record evidence is inconclusive as to whether these student loans had ever been more than 180 days delinquent before Applicant obtained deferment status for them. Consequently, Applicant did not falsify his e-QIP when he did not include these student loans in response to Section 26. I conclude that there are no personal conduct security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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.

Applicant's financial problems were caused primarily by circumstances beyond his control after he struggled for years, after losing his job in 2005, to earn the income that he had earned before losing his job. Applicant addressed his financial problems responsibly by returning to school to obtain more education to increase his employment marketability.

Since obtaining a well-paying job, Applicant has been taking steps to satisfy his debts, attending financial counseling, developing a payment plan, and contacting creditors. Also, he has satisfied several debts that were not listed in the SOR. I conclude that there is sufficient presence of rehabilitation to minimize the likelihood of continuance or recurrence of financial problems. In reaching this conclusion, I considered the length of time that Applicant held a security clearance in the past, and his sterling personal and professional references.

### **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

Subparagraphs 1.a-1.q:

For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge