DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-00232
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Appellant: *Pro se*

08/28/2019

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Decision

_____

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has significant debts and multiple bankruptcy filings. Based upon the record as a whole, eligibility for access to classified information is denied.

Statement of the Case

On March 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on May 10, 2019, admitting eight of the 21 SOR allegations, admitting in part and denying in part seven allegations, and denying the remaining six allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On June 18, 2019, the case was assigned to me. DOHA issued a notice of hearing on June 21, 2019, scheduling the hearing on July 24, 2019.

I convened the hearing as scheduled. Department Counsel offered seven documents, which I marked as Government Exhibits (GE) 1 through 7. Applicant offered five documents, which I marked as Applicant Exhibits (AE) A through E. I kept the record open until August 7, 2019, to give Applicant the opportunity to submit additional exhibits. On August 6-7, 2019, he emailed five additional exhibits, which I have marked as AE F through J. All exhibits were admitted into the record without objection. DOHA received the transcript on August 5, 2019 (Tr.).

Findings of Fact

I have incorporated Applicant's admissions in his SOR response in the findings of fact. Applicant's personal information is extracted from GE 1, his security clearance application, dated September 9, 2017, (SCA) unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant, 49, works for a U.S. Government contractor as a program management principle. He has been employed by his security clearance sponsor since 2008, when he earned a bachelor's degree. He also entered into a master's program in 2011 and earned his degree in 2015. He has held a security clearance since 2008. The DOD CAF's action was based upon Applicant's financial problems arising out of his divorce and related child-custody issues.

Applicant was married in 2004. He and his wife have two children, and she has a child from a prior relationship. Applicant's wife filed for divorce in 2011. The divorce was finalized in 2013. After the divorce, Applicant fathered a child with another woman.

Applicant had joint custody of their children with his ex-wife until 2016. He filed for full custody of the children due to the behavior of his ex-wife. This began a lengthy court battle that Applicant eventually lost. In December 2016, his ex-wife was awarded sole legal custody of their two children and his rights were limited to visitation every other weekend. His child support payments increased from $300 to $2,200 per month, which caused him financial hardship. He also incurred significant legal expenses and other costs related to the custody dispute. After he lost his joint custodial rights, he was ordered by the court to pay his wife's legal expenses. The dispute with his ex-wife is ongoing three years later.

On four or more occasions, the civil divorce court found Applicant to be in contempt of its orders. The court also ordered Applicant to be jailed for two days for contempt. The

order regarding contempt states that this penalty was imposed due to Applicant's submission of false income information and documentation, but Applicant insists he was only jailed because he could not afford to pay the court-ordered legal fees. (Tr. 27-29, 39-40, 42, 44, 46, 81-82.; GE 5 at 1, 12; AE B at 32, 34-44, 45, 48-51, 54)

Applicant borrowed significant amounts of money to pay the expenses of his unsuccessful attempt to gain full custody of his children, even though he was making about $120,000 per year, and with a second job in 2017, he made an additional $40,000 in that year. This custody dispute occurred while he was also paying for graduate school with borrowed funds. At the same time that he was incurring these new debts, he also retained his home on which he had a mortgage in excess of $400,000. He testified that he did not want to sell his home because he wanted it for his children. He defaulted on both the first and second mortgages, and the lender sued for foreclosure. He also defaulted on a number of loans that he used to finance his expenses related to his custody dispute. In May 2019, Applicant sold his house and paid off his first mortgage and a second mortgage of about $40,000 with the sales proceeds. (Tr. 25, 38-39; GE 7 at 3; GE 4; AE C at 9-10.)

Applicant tried to work with a debt-consolidation company in 2015 and 2016. At that time, he stopped paying his bills, assuming they would be paid by the debt consolidator. The company negotiated a settlement of one of his debts, but Applicant learned that the company was paying itself substantial fees leaving insufficient monies to fund the settlement. He ceased paying the company in 2016. After being ordered to pay his wife's legal fees in late 2017, he opted for what he referred to at the hearing as a new "mitigation strategy." In January 2018, he filed a bankruptcy petition under Chapter 13 (SOR ¶ 1.a), but two of his creditors, his ex-wife and her attorney objected. For reasons that Applicant could not clearly explain, that stopped the proceeding, and it was administratively dismissed when he did not pursue the case. (Tr. 28-35, 57; AE G; AE H.)

In July 2018, Applicant refiled under Chapter 13 with the same result. (SOR ¶ 1.b) He submitted after the hearing evidence that he had filed a new bankruptcy petition on August 7, 2019, this time under Chapter 7 seeking a full discharge of his debts. He testified at the hearing that he was contemplating taking this step, but he could not explain why such a petition would not face the same obstacles that halted his prior two petitions. He also testified that in filing for bankruptcy relief, he was not intending to alter his court-ordered obligations to pay his ex-wife and her attorney, but he could not explain why they sought to prevent him from pursuing his bankruptcy petition. (Tr. 28-30, 32-33, 36, 41-43; AE F.)

The 19 delinquent debts alleged in the SOR total more than $700,000, the largest of which was his mortgage and second mortgage. Applicant submitted no documentary evidence listing the debts covered by his latest bankruptcy petition. (SOR response; AE F.)

In his SOR response, Applicant admitted the following six delinquent debts, which total about $100,000:

SOR ¶ 1.c: Debt owed to lender placed for collection in the amount of $13,509. Applicant borrowed $15,000 from this lender in January 2016 to pay his bills during the period of his financial distress caused by his 2013 divorce and subsequent child-custody dispute. He defaulted on the loan in about January 2017 due to the ongoing costs associated with his lengthy divorce proceeding. Aside from his attempts to seek relief from this debt under Chapter 13, he has done nothing to pay the debt. The same is true with respect to the debts alleged in SOR ¶¶ 1.e and 1.f, discussed below. (GE 2 at 8-9; Tr. 49-51.)

SOR ¶ 1.e: Debt owed to a lender charged off in the amount of $32,143. Applicant borrowed $35,000 from this lender in February 2015 to pay his bills during a period of financial distress caused by his divorce. He defaulted on the loan in about June 2016. He has not resolved this debt, but following discussions with the creditor, he has learned that he must initially pay $115 per month for a period to qualify for a settlement to resolve the debt. He has not made any payments. (Tr. 50; GE 2 at 6; AE I.)

SOR ¶ 1.f: Debt owed to a lender charged off in the amount of $27,105. Applicant borrowed $30,000 from this lender in July 2015 and defaulted in May 2016. (Tr. 50; GE 2 at 6-7; AE J.)

SOR ¶ 1.j: Debt owed to computer manufacturer placed for collection in the amount of $1,443. Applicant purchased computer equipment on credit in 2015 and defaulted in July 2016. (Tr. 56-57; GE 2 at 9; GE 7 at 4.)

SOR ¶ 1.l: Debt owed to a lender placed for collection in the amount of $15,473. Applicant did not disclose this debt in his SCA, and it was not discussed in his February 2018 background interview. He listed the debt in his July 2018 Chapter 13 bankruptcy petition. He testified that this debt is one of his student loans, which he paid for a period and then stopped paying. (Tr. 59-62; SOR response; GE 4 at 37.)

SOR ¶ 1.m: Debt owed to a credit union on a credit-card account in the amount of $25,886. Applicant did not disclose this debt in his SCA, and it was not discussed in his February 2018 background interview. He listed the debt in his July 2018 Chapter 13 bankruptcy petition. He testified that he has contacted the credit union but has not agreed to a payment plan nor has he made any payments. (Tr. 62-64; SOR response; GE 4 at 37.)

In his SOR response, Applicant admitted five debts and one other allegation "in part." These matters are:

SOR ¶¶ 1.g and 1.h: Two credit-card accounts placed for collection in the amounts of $20,945 and $11,072, respectively. In both cases, the credit-card issuers sued Applicant and obtained judgments, which were enforced for a period by way of

garnishment. Applicant testified that the garnishments ceased at some point, though he acknowledged that much of the debts remain unpaid. He could not explain why the garnishments ceased, but it is likely the result of Applicant's bankruptcy filings. These debts remain unpaid, though the amounts due may have been somewhat reduced unless interest and collection expenses actually increased the amounts of the debts. (Tr. 51-52.)

SOR ¶¶ 1.o and 1.p: First and second mortgage accounts listed in Applicant's July 2018 Chapter 13 bankruptcy petition. Applicant and his ex-wife bought a residence in April 2009. In connection with his separation and divorce, he refinanced the mortgage loan in the amount of $407,500. He also borrowed or had a line of credit in the amount of $50,000 from the same lender that was secured by a second mortgage. He defaulted on both loans in late 2017. The lender instituted mortgage foreclosure proceedings. He hoped that his Chapter 13 bankruptcy filings in 2018 would halt the foreclosure on his home or give him the opportunity to renegotiate the repayment terms of the loans. Before the foreclosure was completed, Applicant sold the home in May 2019, and the proceeds were sufficient to satisfy both loans. Applicant introduced a document from the lender evidencing that the first mortgage was paid in full. He also provided a current credit report that reflected that the second mortgage was also satisfied. (Tr. 65-68, 93; AE D at 1, 3, 17-19; GE 2 at 10.)

SOR ¶ 1.q: Debt owed to Applicant's ex-wife in the amount of $19,762. In his SOR response, Applicant admitted that he owes this debt, which is for his ex-wife's legal fees, plus interest on the debt. The civil court had ordered that the debt be paid through a wage garnishment in monthly installments of $1,000. This payment is in addition to the wage garnishment for his ongoing child support payments, plus $500 per month for sanctions. He testified that the debt was not actually for a delinquency. The debt represents monies accruing during the interval between when his ex-wife requested increased child support payments and when the court actually awarded her the increase. Applicant claims this debt is now about $16,000, plus interest, but he failed to provide any documentation reflecting the remaining balance. (Tr. 44-45, 47-48, 68-69; AE B at 45-47, 53-54.)

SOR ¶ 1.u: Court ruling holding Applicant in contempt for failure to make required payments and ordering him to serve two days in jail with a 60-day suspended sentence. Following hearings in February and April 2018, the civil court found that Applicant had failed to make required payments and had been deceptive in his discovery responses and testimony and had "fabricated tax returns." Applicant conceded at the hearing that he was found in contempt and ordered to be jailed for two days in 2018, but he insisted that the contempt was solely due to his inability to pay the legal fees of his ex-wife, as required by the court's order. In making this argument, he admitted that he had failed to make the required payments. (Tr. 76-84; GE 5; AE B.)

In his SOR response, Applicant denied the following six remaining debts:

Applicant claimed to have paid only one of these debts, and the amount of the debt was $133. (SOR ¶ 1.n.) He provided no documentary evidence of the payment. He

asserted that he paid off a car loan with a voluntary repossession, again without any documentary evidence that there was no deficiency debt claimed by the lender. (SOR ¶ 1.t.) He claimed that a loan was repaid as part of his debt-consolidation effort, though he testified that this debt was not resolved because the consolidation company paid itself a fee and the lender would not accept the reduced amount of the previously negotiated settlement amount. (SOR ¶ 1.i.) In his SOR response, he denied the three other debts claiming he was unaware of them and had never heard of the alleged creditor. (SOR ¶¶ 1.k, 1.r, 1.s.) In his background interview, he admitted that he was aware of the unpaid medical bill alleged in SOR ¶ 1.k. He also admitted at the hearing that he had made no inquiry into the two largest alleged debts for $29,142 (SOR ¶ 1.r) and $32,143 (SOR ¶ 1.s) and creditors, although they were listed in his July 2018 bankruptcy petition. He believes they may be duplicates of the debts alleged in SOR ¶ 1.f and ¶ 1.e, respectively, but he cannot say for sure since he has not investigated either debt. (Tr. 37, 52-54, 59, 64, 70-72, 74-76; GE 2 at 7; GE 4 at 33, 39.)

Applicant testified that he received financial counseling from the debt-consolidation company, but it is unclear from the record whether the counseling was from a reliable and qualified source. He also provided evidence of having completed the bankruptcy requirement of counseling as part of one of his Chapter 13 petitions. He may have also received counseling from his bankruptcy attorney, but there was no evidence as to what the attorney may have advised, and the results of the two petitions filed in 2018 raise questions about the advice and whether Applicant followed it. (Tr. 85-86; AE E.)

The contempt citations issued by the civil divorce court are relevant to the issue of character. Applicant insists, however, that that his problems with the court were limited to his inability to pay everything he was required to pay in a timely manner.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

> 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. . . . An individual who is financially

> overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's admissions in his SOR response and testimony and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

> AG ¶ 20(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;
>
> AG ¶ 20(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;
>
> AG ¶ 20(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;
>
> AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts; and
>
> AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debts which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating conditions set forth in AG ¶¶ 20(a) and 20(b) have not been established. Applicant's financial problems are recent and frequent, making them likely to recur and casting doubts about his judgment and reliability. His divorce and perhaps his child-custody dispute can be considered as beyond his control, but there is little evidence that he acted responsibly under the circumstances. His mitigation strategies were unsuccessful, starting with a failed attempt to consolidate debts that were simply too large

to be repaid in a reasonable period of time and then followed by two bankruptcy filings in a short time with no clear explanation as to why he did not complete the proceedings. There is no reason to believe that his third bankruptcy filing, this time under Chapter 7, is any more likely to be successful than the prior two. He did sell his residence and pay off his two largest debts, but the size and number of the remaining debts are significant.

Applicant claims that he received financial counseling from the debt-consolidation company, but there is no evidence in the record that the source of the counseling was legitimate and credible or that the counseling contributed in any significant way to a resolution of Applicant's financial problems. Applicant was required to take counseling courses with his bankruptcy filings. Significantly, there is no clear indication that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) has been partially established.

Applicant has not paid any of the debts alleged in the SOR, with the exception of his mortgage loans following the sale of his home, which was the subject of a pending foreclosure. A Chapter 7 discharge of his debts in bankruptcy cannot be considered a good-faith effort to resolve his debts. With the exception of the two mortgage loans, AG ¶ 20(d) has not been established.

Even the debts Applicant disputed were not legitimately disputed or documented and in two cases, were not even investigated as to whether they were legitimate or just duplicates of other debts alleged in the SOR. One of those debts, however, (SOR ¶ 1.s) is for the exact same amount as SOR ¶ 1.e, which he admitted in his SOR response. It is reasonable to assume that SOR ¶ 1.s alleges a duplicate debt. With that exception, AG ¶ 20(e) has not been established with respect to the SOR allegations Applicant has denied.

Applicant's case for mitigation is simply that he got into legal difficulties with his child-custody dispute, and he could not afford to remedy his problem. In the absence of satisfactory evidence that he exercised sound judgment in addressing his personal legal problem and then his resulting financial problems, he has not mitigated the security issues about his trustworthiness and reliability.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d). These 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.

My analysis of the Guideline F mitigating conditions addresses many of the above factors. I have considered the seriousness of Applicant's financial situation and the fact that many of his debts arose out of his efforts to do what he thought was best for his children. A mature, responsible individual, however, must also act in accordance with his financial capabilities. It is apparent from the divorce court orders in the record that Applicant had significant problems complying with the orders, particularly with respect to payments to his ex-wife and her attorney. Even more concerning is that his substantial indebtedness to a number of other creditors supports a conclusion that his financial problems will continue for the foreseeable future.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial considerations.

Formal Findings

Guideline F, Financial Considerations	AGAINST APPLICANT
Subparagraphs 1.a - 1.n:	Against Applicant
Subparagraphs 1.o - 1.p:	For Applicant
Subparagraphs 1.q - 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge