



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



In the matter of:)	
)	
)	ISCR Case No. 19-01524
)	
Applicant for Security Clearance)	

Appearances

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

05/27/2020

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. A Statement of Reasons (SOR) was issued under Guideline F, financial considerations, due to collection, charged-off, and delinquent accounts. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 31, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF acted under Executive Order 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On June 27, 2019, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On December 11, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on January 15, 2020.

Four Government exhibits (Ex. 1 – 4) and three Applicant exhibits (Ex. A – C) were admitted into evidence without objection. The record was held open following the hearing to allow Applicant to submit additional documentation. On January 21, 2020, five documents were received and admitted into evidence without objection as Ex. D – H. On February 5, 2020, an additional document was received and admitted into evidence without objection as Ex. I. Applicant and his second-line supervisor testified, as reflected in a transcript (Tr.) received on January 29, 2020.

Findings of Fact

In Applicant's answer to the SOR, he denied a \$603 medical collection account and a \$728 collection account. He admitted the two charged-off accounts for two repossessed vehicles and the other charged-off, delinquent, and collection accounts listed in the SOR. After a thorough review of the testimony, pleadings, and exhibits, I make the following findings of fact.

Applicant is a 29-year-old manufacturing supervisor who has worked for a defense contractor since July 2018 and seeks to obtain a security clearance. (Ex. 1, Tr. 16) From July 2008 through July 2014, he served honorably in the U.S. Air Force before separating as an airman first class (A1C) (E-4). (Ex. 1) The U.S. Department of Veteran's Affairs (VA) rates Applicant's disability at 60 per-cent due to back issues, knee problems, migraines, sleep apnea, irritable bowel syndrome, and hearing problems. (Tr. 57) His disability pay is approximately \$1,400 monthly. (Tr. 57) When hired at his current job, his starting salary was approximately \$57,000. (Tr. 26) His current base annual income is approximately \$77,000 and, with overtime, is approximately \$108,000. (Tr. 16, 54, 55)

Prior to leaving the Air Force, Applicant had received an offer for a position as an airfield operations manager. However, after leaving the Air Force, he discovered the position had been filled by another. (SOR Response) Not having the anticipated job, he struggled financially to adapt to civilian life. He decided to go to college. While going to school, he had a job at a supermarket and then at a guitar store. He later obtained a position as a motorcycle sales representative. During his first four years after leaving the Air Force, his credit suffered as did his finances generally.

In November 2008, Applicant married. He and his spouse have four children ages 2, 3, 6, and 10. (Tr. 11) He is current on his vehicle payments and on his \$1,700 monthly home mortgage payments, which he had purchased in August 2019 for \$203,000. (SOR Response, Tr. 41, 58) He has two credit cards that are in good standing. He no longer lives paycheck to paycheck and contributes eight percent of his salary to his company's 401(k) retirement plan. (SOR Response) He is current on his \$292 monthly payments for his Department of Education student loan debt. (Ex. E) The student loan debt is not listed

in the SOR as a debt of concern. He asserted that since gaining his current employment, he has paid a number of debts not listed in the SOR. (Tr. 39)

In August 2015, while Applicant was working for a motorcycle dealership, he purchased a motorcycle. Initially, he was making a good income selling motorcycles, but this did not last. The owner of the dealership fired him when the owner found out Applicant was seeking different employment. (Tr. 24) Unable to make his monthly payments, the motorcycle was repossessed and resold, which left a \$7,962 delinquency (SOR 1.b). (Ex. 2) In September 2019, the creditor offered to settle the debt for \$3,184 with monthly payments of \$61.25 starting in September 2019. (Ex. A, Tr. 33, Tr. 43) Applicant accepted the offer. Between September 2019 and January 2020, he made 15 payments totaling \$918. (Ex. C, Ex. H) Applicant asserts the last payment of the settlement agreement is to be made in August 2020. (Ex. A, Tr. 33)

In 2013, while Applicant was still on active duty, he purchased an automobile. (Ex. 2, Tr. 29) In March 2016, he was unable to make his monthly payment, and the vehicle was repossessed resulting in a \$12,958 balance owed (SOR 1.a). (Ex. 2) Between the repossession and September 2018, when he provided a subject interview, he contacted the creditor a few times. (Ex. 2, Tr. 45) In January 2020, the automobile finance company agreed to accept \$9,070 to settle the debt. (Ex. D) The finance company also agreed to notify the credit bureaus to update the account to "Charged off – settlement in full" once the account is paid. (Ex, D)

In 2014, Applicant, then age 24, was working part time at a guitar store while attending college full time when he opened a line of credit and purchased a guitar. (Ex. 2, Tr. 34, SOR Response) He admits not handling his finances properly, and the account became delinquent. The debt was charged off in the amount of \$997 (SOR 1.c). At the time of the hearing, Applicant was attempting to determine who currently holds the debt. (Tr. 49) When he went to the guitar store's website seeking information on the debt, no record was disclosed. (Tr. 52) A January 2020 letter from the creditor states the account has a zero balance. (Ex. I)

When Applicant made his SOR Response, he denied owing a \$728 account that was placed for collection (SOR 1.e) However, during his September 2018 enhanced subject interview, he did not dispute the debt. (Ex. 2) The debt is reportedly a cell phone bill with Verizon. A collection agency is attempting to collect the delinquent amount. In the spring of 2019, he contacted the collection agency's website in an attempt to verify the debt and found no record of the account. (Tr. 36, 52, SOR Response) His February 2018 credit report indicates the "account was disputed." (Ex. 4) The account no longer appears on any of his three January 18, 2020 credit reports. (Ex. E – G) The credit reports list numerous other accounts as being paid as agreed. (Ex. 3)

In 2015, Applicant had his appendix removed. (Tr. 36) He incurred a \$603 medical debt for anesthesia services (SOR 1.d). This debt is listed only as delinquent and not listed as charged off or in collection. In April 2019, Applicant made a \$100 payment to address an emergency physicians' debt. (Ex. B) In May 2019, this debt was settled and paid leaving a zero balance. (Ex. I, SOR Response, Tr. 35) His surgery also resulted in a

\$1,692 medical account (SOR 1.f) that was placed for collection. Applicant contacted the collection company to discuss settlement of the debt. (Tr. 37) The company was not willing to negotiate a lower settlement and payment arrangements were discussed. (SOR Response) He had previously believed this debt had been paid. (Tr. 54) His January 16, 2020 credit report lists zero balances on two anesthesia accounts and a balance of \$602 on another anesthesia account. (Ex. F)

Applicant owed a \$480 cell phone debt (SOR 1.g) that was placed for collection. In June 2017, the debt was incurred when he changed mobile phone carriers. He paid the debt in full after the collection agency was unwilling to reduce the amount of the debt. (Tr. 37) At the hearing, he asserted he would provide documentation showing payment had been made. He owed a \$219 power and light debt (SOR 1.h) that was placed for collection. He entered into a “pay to delete agreement.” (Tr. 38) However, each time he contacted the company, he was unable to reach anyone to resolve the debt. (SOR Response) His February 2018 credit report indicates the “account was disputed.” (Ex. 4) The debt does not appear on his most recent credit reports. (Ex. D – G)

In July 2018, when Applicant started his current job, he wanted to get himself on a solid financial footing. (Tr. 44) He applied his funds to making his car payments, paying his rent, and providing for food. (Tr. 44) He currently maintains his budget through an Excel spreadsheet. (Tr. 55) He is current on his \$533 monthly car payments and his \$1,700 mortgage payments. (Tr. 77) He has \$22,000 in his 401(k) retirement plan. (Tr. 56) Applicant is not receiving calls or letters from creditors demanding payment. (Tr. 40) He is current on his student loans, which total approximately \$20,000. (Tr. 59) He intends to pay all of his debts. (Tr. 77) He has not had any financial counseling. (Tr. 61) He asserts he has grown and matured since leaving the Air Force. (Tr. 76) He no longer thinks he has the world figured out.

Character Statement

Applicant’s second-line supervisor, a multi-functional manufacturing manager, who has mentored Applicant for more than a year and a half, states Applicant is a hard-working, dedicated member of the team. He said Applicant’s morals and ethics are above reproach. Applicant has a willingness to learn from his past mistakes, to change for the better, and see things through. (SOR Response) He has discussed with Applicant the Applicant’s finances, including how to address his debts, and states Applicant is actively working to pay down his debts. (Tr. 64, SOR Response)

Policies

When evaluating an applicant’s suitability for a security clearance, 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 must be considered in evaluating an applicant’s eligibility for access to classified 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 adjudication process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) 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.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

In Applicant's answer to the SOR, he denied two collection accounts totaling \$1,331 and admitted the remaining delinquent obligations totaling approximately \$30,000. The debts resulting from two repossessed vehicles accounted for approximately \$27,000 of the \$30,000 amount. The record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt 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 Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board stated in ISCR Case No. 17-00263 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.”

Applicant paid the guitar account (SOR 1.c) and a cell phone service account (SOR 1.g). He accepted a settlement agreement on his repossessed automobile that he had purchased in 2013 when he was on active duty. In January 2020, the automobile finance company agreed to accept \$9,070 to settle the debt (SOR 1.a), which he accepted. He has made numerous payments under a repayment agreement on the repossessed motorcycle (SOR 1.b). Those payments are persuasive evidence that he will continue to make payments until the debt has been paid in full. His track record of payments on that repayment agreement gives me reason to believe he will also honor the repayment agreement on the repossessed automobile debt. AG ¶ 20(d) applies to the debts he has paid and the debts that he is resolving under established repayment agreements.

Applicant disputes a \$728 collection account (SOR 1.e). The debt arose as a cell phone bill. His February 2018 credit report indicates the “account was disputed.” In the spring of 2019, he contacted the collection agency in an attempt to verify the debt and no record of the account was found. The account no longer appears on any of his three January 18, 2020 credit reports. He also disputes a \$219 delinquent electric utility debt (SOR 1.h). He had entered into a “pay to delete agreement” with the company. Each time he contacted the company, he was unable to reach anyone that could resolve the debt. His February 2018 credit report indicates the “account was disputed,” and the debt does not appear on his most recent credit reports. The evidence falls short of establishing Applicant’s liability for those debts.

The remaining two debts, both medical debts, resulted when Applicant had his appendix removed in 2015. The \$603 medical debt (SOR 1.d), for anesthesia services is listed as delinquent, but not as charged off or in collection. In May 2019, this debt was settled and paid leaving a zero balance. His surgery resulted in a second medical debt (SOR 1.f) that was placed for collection. He had previously believed this matter had been paid. He contacted the collection company to discuss settlement of the debt. However, the company was not willing to negotiate a lower settlement and payment arrangements were discussed. His January 16, 2020 credit report lists a zero balance on two anesthesia accounts and a balance of \$602 on another anesthesia account.

While he was on active duty in the Air Force, he purchased a car that was later repossessed. Prior to leaving the Air Force, he had received an offer for a position as an airfield operations manager, but discovered after his discharge that the position had been filled by another after he had left the Air Force. This placed him in an unexpected position of being unemployed. He decided to go to college and worked while in school at a supermarket and then at a guitar store. He later obtained a position as a motorcycle sales representative. While working in these positions he purchased a guitar and a motorcycle. His guitar debt has been paid; he is repaying the motorcycle debt; and he has a repayment agreement on the repossessed car debt. He owes a little over \$11,000 on the loans for the repossessed motorcycle and car, which accounts for 88 percent of the SOR debt.

The purchase of the car, motorcycle, and guitar all occurred while he was employed. It was the loss of employment that contributed to his inability to repay the debts. These purchases happened a while ago, there are only three, which indicates they are infrequent, and occurred under circumstances unlikely to recur. Having resolved the guitar debt and with repayment agreements on the vehicle loans, these debts do not cast doubt on the individual's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant's loss of employment after the purchases was a condition beyond his control. Additionally, the medical debts resulted from having his appendix removed, which is an unexpected medical emergency. He has acted responsibly to address the debts, under the circumstances. AG ¶ 20(b) applies.

In July 2017, when Applicant started his current job, he wanted to get himself on a solid financial footing. In August 2019, his finances were sufficiently meritorious that he was able to obtain a mortgage to purchase a \$203,000 home. Routinely, mortgage companies do not approve mortgages unless they believe the borrower is a good financial risk. He maintains a budget, is current on his mortgage payments, vehicle payments, utility bills, student loans, and is not receiving call or letters from creditors demanding payment. He has \$22,000 in his 401(k) retirement plan. He no longer lives paycheck to paycheck. Even though he has not had any formal financial counseling, there are clear indications that the problem is being resolved and is under control. AG ¶ 20(c) applies. AG ¶ 20(c) is also established because Applicant has paid in full or settled some debts, and has taken significant steps toward addressing the delinquent vehicles loans that account for most of the indebtedness of concern to the DoD.

Applicant disputes two small SOR debts (SOR 1.e and 1.h). When he contacted the creditors, they could provide no information on the debts. He disputed them on his credit reports, and they no longer appear on his current credit reports. AG ¶ 20(e) applies to these two small debts.

An applicant is not required to establish that he has paid each of the delinquent debts in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan, which he has done. The financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

I have considered Applicant's honorable active duty service in the U.S. Air Force. His military service resulted in disabilities rated by the VA at 60 per-cent due to back issues, knee problems, migraines, sleep apnea, irritable bowel syndrome, and hearing problems. His military service merits respect and consideration.

Supervisors' character evaluations are important and often more accurate because they have observed individuals over longer periods of time and under a variety of events and stresses. Supervisors are required to evaluate individuals and describe their performance, trustworthiness, reliability, and dedication. Applicant's second-line supervisor has mentored Applicant for more than a year and a half. He states Applicant is a hard-working, dedicated member of the team whose morals and ethics are above reproach. Applicant has a willingness to learn from his past mistakes, to change for the better, and see things through. He has discussed Applicant's finances with him, including how to address his debts, and states Applicant is actively working to pay down his debts. These comments inspire confidence that Applicant will follow through on his repayment agreements and address his financial obligations.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid, it is whether Applicant's financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure.

Overall, the record evidence leaves me without questions and doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations 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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a – 1.h: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge