



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 19-01683
)
 Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes more than \$34,000 in delinquent consumer credit-card debt and \$2,729 in medical collection debt. While unexpected medical expenses may have caused or contributed to his financial problems, he has made little progress toward resolving his past-due balances. Clearance is denied.

Statement of the Case

On June 10, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On August 14, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record in lieu of a hearing. On September 5, 2019, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1-6). The Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on September 10, 2019. No response was received by the October 10, 2019 deadline. On November 22, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on December 5, 2019.

Evidentiary Ruling

Department Counsel submitted, as Item 4, a summary report of a personal subject interview (PSI) of Applicant conducted on September 20, 2018. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

IMPORTANT NOTE FOR APPLICANT – Applicant was not given an opportunity to review and authenticate this summary document (Item 4) prior to issuance of the SOR. The Government acknowledges that, under ¶ E3.1.20 of Enclosure 3 of Directive 5220.6, Applicant can object to its admissibility on this ground. The Government also recognizes that some of the information contained there in may not be entirely correct, or up to date. Applicant is therefore free to correct, revise or update the information in any Response to this filing, as well as to pose an objection to its admissibility. Moreover, while Applicant's interview may add some details regarding his conduct, all facts alleged in the SOR are also proven and discussed elsewhere in this FORM.

Applicant did not respond to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting

evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. In the absence of any objections, I accepted Item 4 in evidence, subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges under Guideline F that, as of the June 10, 2019 SOR, Applicant owed \$35,459 in delinquent consumer-credit debt on ten accounts (SOR ¶¶ 1.a-1.d, 1.f-1.j, and 1.m) and \$2,729 in medical collection debt on six accounts (SOR ¶¶ 1.e, 1.k-1.l, and 1.n-1.p). When Applicant answered the SOR allegations, he admitted that the debts are legitimate and attributed them to having only his income in the household to pay medical expenses (including for ambulance and emergency room services) incurred by his spouse and son and living expenses. He added that he was unsuccessful in negotiating affordable payment plans with his creditors. (Item 2.)

After considering the FORM, which includes Applicant's Answer to the SOR (Item 2), I make the following findings of fact:

Applicant is a 63-year-old inspector with a defense contractor. He has worked for his employer since February 1984 and holds a secret clearance. He and his spouse married in March 2005, and they have an 11-year-old son. (Item 3.)

On May 5, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded affirmatively to an inquiry concerning whether he was currently utilizing or seeking assistance from a credit counseling service or similar resource to resolve financial difficulties. He indicated that he had fallen behind on credit-card debt and that he had "just started" working with a credit resolution company. He also answered "Yes" to inquiries regarding delinquency involving routine accounts and disclosed that he had seven credit-card debts and four medical bills totaling \$38,424 for which he is legally liable and stated, "My son has had medical conditions since 2012 that has [sic] caused me to fall behind in my financial obligations." Concerning actions taken to resolve these debts, Applicant explained that he was in contact with an agency recommended by his employer through its Employee Assistance Program for assistance in consolidating his debts and creating a financially responsible plan to pay off his debts. (Item 3.)

A check of Applicant's credit on July 26, 2016, revealed several credit-card and medical-account delinquencies. A credit-card account with a \$14,900 credit limit was charged off for \$15,987 in July 2014, after inactivity since November 2013 (SOR ¶ 1.a). A credit-card account with a \$5,000 credit limit had been in collection for \$5,653 for at least two years as of July 2016 (SOR ¶ 1.b). A credit-card account, opened with a toy retailer in

July 2013, was placed for collection in August 2014 after nonpayment since January 2014. As of July 2016, the collection balance was \$2,261 (SOR ¶ 1.c). A credit-card debt of \$1,822 from August 2013 was assigned for collection in April 2015 (SOR ¶ 1.d). A credit-card account, opened in April 2012, was placed for collection in August 2014 for \$1,185 (SOR ¶ 1.f). A credit-card account with a retailer, opened in November 2013, was placed for collection for \$884 in June 2015 after inactivity since February 2014 (SOR ¶ 1.g). Another credit-card account with a retailer, opened in March 2012 with a \$500 credit limit, was charged off for \$714 in August 2014 (SOR ¶ 1.h). A \$637 credit-card debt was in collection after no activity since August 2012 (SOR ¶ 1.i). Applicant was an authorized user on the account. A store credit card, obtained in October 2009, became past due and was charged off for \$606 in November 2014 (SOR ¶ 1.j). A \$5,139 credit-card judgment was entered against Applicant in October 2015 (SOR ¶ 1.m). As of July 2016, Applicant also owed medical collection debts of \$1,570 from November 2013 (SOR ¶ 1.e); \$111 from April 2014 (SOR ¶ 1.l); \$408 from September 2015 (SOR ¶ 1.n); \$377 from February 2013 (SOR ¶ 1.o); and \$211 from December 2013 (SOR ¶ 1.p). (Item 5.)

On September 20, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He stated that he had contacted a debt resolution company about one month prior to completing his May 2016 SF 86, and that he was advised to file a bankruptcy petition and seek advice from an attorney. He did neither and had no further contact with the company. Applicant admitted that he was not currently utilizing or seeking assistance from a credit counseling service or similar resource to resolve his financial difficulties. Applicant did not dispute the judgment debt on his record but indicated that it had been incurred by his spouse. He acknowledged that he was responsible for the debts incurred by his spouse using his credit. When asked to detail his debts, he provided information from a September 17, 2018 credit report which confirmed several of the delinquent accounts in the SOR (¶¶ 1.a-1.b, 1.f-1.j, and 1.m). Applicant stated that his financial problems began in 2010 or 2011 because of insufficient income and medical expenses for his son, who has a neurological disorder, and that he used credit cards for day-to-day living expenses. Applicant disputed the medical collection debts on his record and some of the credit entries that he did not recognize. He explained that he had made no attempt to make payments on his delinquencies because he has only had enough money to pay his mortgage and his taxes. He denied any use of any credit cards since 2014, stating that he uses cash for purchases. He expressed a long term plan to pay off his delinquent debt once his mortgage loan is satisfied in a few years. (Item 4.)

Applicant was re-interviewed by the OPM investigator on September 27, 2018. After checking his financial record, he no longer disputed any of the debts on the SOR. He acknowledged that he had incurred the credit-card debt that went to judgment (SOR ¶ 1.m). As for his plans to address his past-due debts, Applicant related that his mortgage would be paid off in four years, and his spouse's car would be paid off in three to four years. At that time, he would have the income to make payments on his delinquent debts if his creditors were willing to work with him. (Item 4.)

As of April 2019, Equifax was reporting delinquent debts totaling \$37,154 (SOR ¶¶ 1.a-1.m) on Applicant's credit record. He has no new credit-card debt on his record.

Applicant was reportedly making timely payments of \$805 per month on his mortgage with a \$30,519 balance and \$409 per month on an automobile loan obtained for \$29,978 in July 2013. The balance of the car loan was \$6,822. (Item 6.)

On June 10, 2019, the DOD CAF issued a SOR to Applicant because of his unresolved credit-card debts. (Item 1.) In his August 14, 2019 response, Applicant cited as causes for his legitimate debts medical bills for his wife and son; only his income in the household; utility bills, property taxes and food; and unexpected emergency room and ambulance expenses. Applicant explained that he tried to negotiate workable payment plans with creditors without success. (Item 2.) He provided no details or specifics about his income or expenses.

In the September 5, 2019 FORM, Applicant was placed on notice of the Government's concern about his failure to provide any documentary evidence to show that he acted responsibly toward his creditors or that he has any repayment plans in place for his debts. In rebuttal to the FORM, Applicant had an opportunity to provide information of medical bills and other expenses; of his current income; and of contacts with creditors about affordable repayment terms for his debts. There is no indication that he responded by the October 10, 2019 deadline.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 are required to 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 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 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. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to 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

The security concerns about financial considerations are articulated in 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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. 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.

Applicant starting having serious financial difficulties in 2013. Over the next two to three years, nine of his credit-card accounts were charged off or placed for collection (SOR ¶¶ 1.a-1.d, 1.f-1.h, 1.j, and 1.m), and he defaulted on six medical debts (SOR ¶¶ 1.e, 1.k-1.l, and 1.n-1.p). Disqualifying conditions AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply. Another credit-card debt of \$637 from August 2012 was placed for collection (SOR ¶ 1.1.i). The account remains on his credit record, but as an authorized user, he is not legally responsible for repayment.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

(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 person has received or is receiving 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.

Applicant explained that he experienced financial difficulties because of out-of-pocket medical expenses for his son and spouse, when he is the only income provider for the household. Ambulance and emergency room expenses are unexpected, but it is unclear in the record whether they resulted from a circumstance that is unlikely to recur or from an exacerbation of a pre-existing illness or chronic condition. Even if the medical expenses were incurred under a unique circumstance of the type contemplated within AG ¶ 20(a), Applicant benefitted from the consumer credit extended to him, and he has yet to make any payments toward the consumer-credit delinquencies alleged in the SOR, which became seriously past due between 2013 and 2015. The debts are considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct

and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not apply.

An unexpected medical emergency is a situation that implicates AG ¶ 20(b). Even assuming that the medical debts in the SOR were incurred because of circumstances outside of his control, several of Applicant’s unpaid delinquencies are owed to retailers. Applicant presented no evidence showing that the consumer-credit charges were incurred for necessities rather than discretionary purchases. Moreover, I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). During his OPM interviews in September 2018, Applicant indicated that he lacked the income to make payments on his old delinquencies, but that he would address them once he pays off his mortgage and the loan for his spouse’s vehicle in a few years. Available credit records show that he makes his loan payments on time, and housing and transportation are understandable financial priorities. Nevertheless, his ongoing disregard of a court judgment for the credit-card debt casts doubt upon whether he can be counted on to comply with rules and regulations that may not be in his self-interest or a priority for him. He indicated in response to the SOR that he tried to negotiate “a workable payment” with his creditors, but he provided no details and lacks corroboration of any such efforts. It is difficult to find that Applicant acted responsibly when there is scant detail in the record about his income and expenses. AG ¶ 20(b) was not fully established.

As of April 2019, Applicant’s credit report showed no progress toward addressing his consumer-credit delinquencies. He has had ample opportunity to provide evidence of actions taken, if any, to make payments on his delinquent consumer credit debts, and he submitted no evidence of any payments. There is no evidence that he has had financial counseling. Neither AG ¶ 20(c) nor AG ¶ 20(b) can reasonably apply in mitigation. The Appeal Board has consistently held that a promise to pay a debt in the future is not a substitute for a track record of paying debts in a timely manner. See e.g., ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010). AG ¶ 20(e) applies in that Applicant, as an authorized user, is not legally liable for repayment of the debt in SOR ¶ 1.j, although the funds to repay that debt may have to come from his income. AG ¶ 20(e) was not shown to apply to any of the other past-due debts.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Applicant requested a decision on the written record, so it was incumbent on him to provide the evidence that might extenuate or mitigate the poor judgment raised by his history of outstanding delinquent debt. Applicant has shown some financial reform by no longer relying on consumer credit and instead paying in cash for purchases. Whether due to little improvement in his financial situation over the last five years, to a lack of commitment to fulfilling his obligations to his creditors, or to a combination of these or other factors, Applicant has not demonstrated the sound financial judgment expected of a person with eligibility for classified access. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.p:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge