



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



In the matter of:)
)
) ISCR Case No. 19-01796
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on August 2, 2019, and requested a hearing before an administrative judge. The case was assigned to me on October 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 25, 2019. I convened the hearing as scheduled on January 15, 2020. The Government

offered exhibits (GE) 1 through 6. Applicant testified and offered Applicant Exhibits (AE) A through E. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on January 24, 2020.

Findings of Fact

Applicant denied all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He served in the military from 1981 to 1987 and was honorably discharged. He earned two associate degrees. He never married and has no children. He has worked for defense contractors throughout his civilian career. (Tr. 20-22)

Applicant testified that his mother passed away in early 2014 and all of the debts alleged in the SOR occurred around that time through approximately May 2015. He inherited his mother's house and had a period of unemployment from September to December 2014. He testified that these factors had an impact on his finances. He indicated that he kept up with his bills until he got a job, but then had to relocate, which required him to take care of the house he inherited, which was in another state from where he was living. He said he also rents a residence in a third state, where his girlfriend lives and he visits. He provides his girlfriend financial support. (Tr. 22, 30-32)

Applicant completed a security clearance application (SCA) in June 2018. In Section 26, which inquired about his finances, he disclosed he had debts that were turned over to collection companies, charged off, or have been or are 120 days past-due. He listed in the SCA the following debts that are alleged in SOR and the approximate amount owed: SOR ¶¶ 1.a-\$4,000; 1.c-\$2,000; 1.e,-\$1,000; 1.i-\$700; and an additional debt not alleged in the SOR. For each debt he stated that he was laid off from a high paying job and has not had sufficient income to pay them. He indicated he was investigating each debt. Regarding action he had taken to resolve each debt, he stated:

I have not taken any action, so I will try to pay one dollar a year for the next seven years. After that it will be removed from my credit. Till then I will dispute it until it is removed from my credit report. (GE 1)

Applicant was interviewed by a government investigator in September 2018. He was asked about the debts owed in SOR ¶¶ 1.a (\$8,008), 1.e (\$1,465), and 1.i (\$745) that he had disclosed on his SCA. He acknowledged each debt, stating that he intended to satisfy the debts in the next six months via a payment plan, if it is determined that the account belonged to him and the amount owed was accurate. With regard to the debt he disclosed in his SCA in SOR ¶ 1.c (\$4,483), he stated that this was for a credit card and he intended to satisfy it within a year through a payment plan. He acknowledged to the investigator the debt in SOR ¶ 1.d (\$3,934), explaining this was for an apartment rental from 2015, and the landlord was uncooperative. Applicant had engaged a credit

counseling service in September 2018, and he was going to have it investigate the debt, and he would pay it if necessary. He was confronted by the investigator with the debts in SOR ¶¶ 1.f (\$1,453) and 1.h (\$953), and he acknowledged he had experienced financial issues in 2014 and intended to have his credit counseling service investigate these debts and pay them, if necessary. He stated that the debt in SOR ¶ 1.f was for a personal loan. (GE 2)

Applicant completed government interrogatories in May 2019. He was asked to provide information about the debts subsequently alleged in the SOR. He stated he was disputing all of them, but did not explain the basis of his disputes. (GE 3)

In his answer to the SOR, Applicant denied the SOR allegations in ¶¶ 1.a (\$8,008), 1.b (\$5,385), 1.e (\$1,465), 1.f (\$1,453), and 1.h (\$953). With regard to these debts, Applicant stated that the three credit bureaus did not provide him evidence that he signed up online or by mail for any of these accounts alleged in the SOR. He said he began disputing the SOR accounts in 2018. He was not aware of the accounts because he had not checked his credit report in approximately four years. He further stated in his answer:

These debts showed up at the worst possible time for me as my mother had just passed away, and was-and still am supporting three (3) households. I tried to work with some of the debtors and creditors, but they only wanted the money back, which I did not and still do not have. (Answer to SOR).

Applicant denied the debt in SOR ¶ 1.c (\$4,483). In his answer to the SOR, he stated that he disputed this debt and received a letter from the collection company, which told him it had acquired the debt from the original creditor. Applicant stated: "Nothing was sent to me showing that I ever opened a credit card with the original creditor. I have been disputing this charge for a year and still nothing has been found with my signature." (Answer to SOR)

Applicant denied the debt in SOR ¶ 1.d (\$3,934). He stated in his answer to the SOR that this debt is from an apartment complex where he lived in 2015. He stated: "I was unable to pay this one complex once despite the fact that I otherwise consistently paid my rent on-time and in full." He stated he had heated arguments with persons in the apartment office. He believed the landlord was uncooperative and unwilling to work with him. He said the corporate office refused to return his phone calls in spite of his best efforts to settle the debt. (Answer to SOR)

Applicant denied the debt in SOR ¶ 1.i. In his answer to the SOR, he said that he received two letters from the collection company after he began disputing the charge. He stated:

Both letters wanted me to send copies of contracts, bills, or statements showing the amounts I owed despite the fact that I was disputing these debts as not even belonging to me. I tried to point out that I would not have this documentation if the debt was not mine. They did not send me anything

that showed I signed up for a credit card from [Credit Card Company A]. I have been disputing this charge for a year and still have not received anything that shows I signed up online or by mail for this credit card.
(Answer to SOR)

In the above statement, Applicant says he would not have the documentation about the debt if it was not his, which confirms he was aware of it and it belonged to him. At Applicant's hearing, he was asked about the debt in SOR ¶ 1.e. The testimony is as follows:

AJ: Is that your debt?

Applicant: No.

AJ: Really?

Applicant: I have had no proof sent to me.

AJ: Okay.

Applicant: I have had no credit agreement sent to me that I requested.

AJ: Okay, that's not what I'm asking. I'm asking is that your debt?

Applicant: No. No.

AJ: Did you have an account, let's go back, did you have an account with [Credit Card A]?

Applicant: Not that I can recall.

AJ: Is that a yes or a no?

Applicant: No.

AJ: So, you never had an account with [Credit Card A]?

AJ: No. (Tr.35)

Applicant further testified as follows:

Department Counsel (DC): So, I noticed that on your [Applicant] Exhibit C the bank, the bank statements are being sent to [Applicant's name] at [Applicant's address] in State A. Is that your address?

Applicant: Yes.

DC: So, have you not been receiving bills from when this credit account was opened in about, looks like on the 4th of 2016.

Applicant: I don't recall it at all.

AJ: I can't hear you, sir.

Applicant: I don't recall it at all.

DC: So, where did these come from, the copies that we have in your exhibit?

Applicant: These came from [collection company].

DC: And how did you get them specifically?

Applicant: I—they came after I requested a letter—I sent a letter requesting a copy of a credit agreement signed by me. They sent them to me.

DC: Okay. So you're saying it looks like the bill that you selected included in [Applicant] Exhibit C go[es] back to November 2014. So, is it your testimony from November 2014 until now you've never received any of these in the mail?

Applicant: 2014 is too long ago, so no, that I recall.

AJ: I'm sorry, what does "too long ago" mean?

Applicant: Too long ago for my memory.

AJ: Too long ago for your memory?

Applicant: Yes.

AJ: Okay. But how about the ones that were received after that?

Applicant: 2016, I don't know what mail I got back in 2016.

AJ: Okay. Where are you looking at, Ms.---So, your testimony is you never had an account with [Credit Card A]; you never received anything, bank statements, any—you asked [collection company] to provide you documents, which did they?

Applicant: They didn't send me signed credit agreements, I mean.

AJ: I didn't ask that. Did they provide you documents?

Applicant: Not the documents I requested, no.

AJ: Did they—I'm going to ask one more time, did they provide you any documents?

Applicant: Yes, they provided me documents.

AJ: Okay, and what did the documents—these are in your [Applicant] Exhibit C?

Applicant: Yes.

AJ: Okay, so you wanted –you do understand [collection company] is the collection agent for [Credit Card A]; correct? You understand that?

Applicant: Yes, ma'am.

AJ: Okay. And that your debt was verified by the collection attorneys; you saw that?

Applicant: They verified something.

AJ: Okay, Well, I've got a document that says it. Okay.

DC: And you are [Applicant' name] at [Applicant's address].

Applicant: Yes. (Tr. 35-38)

Applicant then testified that his mother was living at the above address before she passed away. He was living at a different location where he was working at the time. (Tr.38)

Additional Testimony:

DC: So that was my next question, where were you working then?

Applicant: In 2014, I was up in City W, State B.

DC: Okay.

Applicant: I was a contractor for 15 years.

DC: Okay, so I'm sure you've reviewed these statements that [Credit Card A] sent you because they're all charges in [Applicant's address] and [City W, State B], which is consistent with where you were at the time from what you just told me. Is that right?

AJ: Can you repeat that, DC, nice and loud.

DC: Sorry. In the documents that [Applicant] has provided with Applicant's Exhibit C, specifically it appears that [Credit Card A] sent him copies of the credit card statements for 2014. And when I look at the charges that are on his credit report, or, I'm sorry, on that

credit card in November of 2014 there are charges in both [City W, State B], and [Applicant's home address], which would appear to be consistent with the two places [Applicant] had domiciles during that time. Which is why I was asking about where he was. And he confirmed he was in [City W, State B]. Is that correct?

Applicant: Yes, ma'am.

DC: So, am I understanding correctly that notwithstanding your review of the charges on the credit card that these appear to coincide with where you were living and the address that coincides with the house that you own now, that these were not your charges, and this card is not your credit card? Is that your testimony?

Applicant: Not without a signed---

AJ: No. I want you to answer the question.

Applicant: No.

AJ: I know you want a signed whatever, but are these your charges on your credit card? You are under oath?

Applicant: Not that I remember.

AJ: Okay, All right. "Not that I remember." But you were living in [City W], as you testified, and [Applicant's address]. (Tr. 39-41; GE 1)

At this point in the hearing, the documents provided were reviewed.

Additional testimony:

DC: I'm looking at his C.

AJ: Yes, Oh, I see, right here. Okay.

Applicant: Yes, they are mine. They are mine. If they are, they are. Okay.

AJ: Well, that is not what you just testified to, sir. (Tr. 41)

Additional testimony:

AJ: Okay, I just want to make sure. And you say you don't remember that. And then you said, oh, maybe—did you have something else you wanted to say on that one, sir?

Applicant: The biggest thing is if it is or is not mine I would like to point out the age of the originals that---. (Tr. 42-43)

Applicant intentionally provided false testimony when he denied that he had an account with the creditor in SOR ¶ 1.e.

Applicant further admitted that the debt did belong to him, but the statute of limitations had run and in his state any debt older than four years was unenforceable. Applicant was asked to provide additional information about the debt and he stated: "That's all I have to say." The debt in SOR ¶ 1.e is not resolved. (Tr. 43-44; GE 1.)

Applicant testified that he does not intend to pay the debt in SOR ¶ 1.a and plans to let it fall off his credit reports. (Tr. 71-74; AE D-Item 2)

Applicant was asked about the debt in SOR ¶ 1.b. He testified the account belonged to him. He said he will either make a payment arrangement to resolve it or have it removed from his credit report. He said he will work to resolve it because he has a checking account with the same creditor, and he does not want that account to be closed. He said when he receives his income tax refund he will see about a payment plan or a settlement agreement. This debt was validated by the creditor. (Tr. 61-65; AE C-Item 7)

Applicant was asked about the debt in SOR ¶ 1.c. He testified it was his debt, but he did not intend to pay it. He intended to wait until it was removed from his credit report in two years. Per his request the debt was validated by the creditor in June and November 2019. (AE C-Item 4) He testified that the debt he owed to the apartment complex for breaking his lease in 2015 that is alleged in SOR ¶ 1.d was removed from his credit report. However, he provided as part of his answer to the SOR, a June 2019 document from the creditor that validated the accuracy of the debt. (Answer to SOR-Exhibit L) Applicant did not pay this debt. He testified that he does not intend to do so. (Tr. 48, 53-60; AE C-Item 5)

Applicant acknowledged the creditor in SOR ¶ 1.f had validated that he owed the debt. He stated it was for an unsecured loan, and he has not had time to make a payment arrangement. He stated he intended to pay this debt. (Tr. 65-66; AE C-Items 5 and 8)

Applicant acknowledged the medical debt in SOR ¶ 1.g that was incurred for an emergency room visit in August 2013. He received a letter validating the debt in June 2019. He testified he did not know why he did not pay the debt, and he does not intend to do so. He will wait for it to drop off his credit report in two years. (Tr. 68-71; Answer to SOR-Exhibit M)

Applicant admitted the debt in SOR ¶ 1.h belonged to him. The debt is unpaid. (Tr. 60-61; AE C-Item 6) Applicant was then asked about the debt owed in SOR ¶ 1.i. He testified that the debt belonged to him, but it would be removed from his credit report in two years, and he did not intend to pay it. He testified that he had an account with the creditor in SOR ¶ 1.h, and that he used the account, but did not know anything else about it. He received a letter in November 2019 from the creditor validating the debt. (Tr. 46-48; AE C-Item 6)

All of the delinquent debts alleged in the SOR are corroborated by Applicant's disclosures in his SCA; admissions made during his background interview; responses to interrogatories; his SOR answer and exhibits attached; AE and Items attached; credit reports from June 2018 and May 2019; and Applicant's testimony.

Applicant continues to maintain three households, one of which belongs to his girlfriend. He testified he contributes about \$3,000 a month toward maintaining his girlfriend's residence where he stays about twice a month. His primary residence that he inherited is paid for, but he pays about \$1,000 for its maintenance and other expenses. The third residence is located near his work. He shares the residence, and he estimated he pays about \$800 a month. He does not have a budget. He has not had financial counseling. He has about \$30,000 in a pension plan. His current salary is about \$120,000, which he began earning about 18 months ago. Before then, he earned about \$80,000 annually. He has no savings. He explained he has not been able to pay his delinquent debts because he did not have the money. He attributed his financial problems to a period in 2014 when he was unemployed and his mother passed away. He is waiting for some of the debts to be removed from his credit report. He believed having the debts removed from his credit report after seven years would provide him a better credit appearance. (Tr. 66, 74-82)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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(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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 concern relating to the guideline for financial considerations is set out 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwilling to satisfy debts regardless of ability to do so; and

(c) a history of not meeting financial obligations.

Applicant has nine delinquent debts totaling approximately \$27,405 that began accumulating in approximately 2013. Applicant does not intend to pay many of the debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant attributed his financial problems to a four-month period of unemployment in 2014 and the passing of his mother around the same time. He has nine delinquent debts. He has not made an effort to repay them. He does not intend to pay most of them. Some he intends to wait until they are no longer on his credit report and potentially unenforceable due to the statute of limitations. Many of the debts were validated at Applicant's request, but he still has not made an effort to pay them. Applicant's debts are recent and ongoing. Based on his attitude toward his financial obligations and failure to resolve any of them, I am unable to find it is unlikely financial issues will recur. His behavior casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a four-month period of unemployment in 2014, his mother's passing, and maintaining three households. His period of unemployment and his mother's passing were beyond his control. Maintaining three households is within his control. For the application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has not. Despite disclosing some debts on his SOR and having others validated, he has not made an effort to pay any of them. He does not intend to pay most of them, and he is waiting for them to be removed from his credit report after seven years. AG ¶ 20(b) does not apply.

Applicant did not provide evidence that he has participated in financial counseling and that there are not clear indications that the problem is under control. He did not provide evidence he has made a good-faith effort to pay or resolve his delinquent debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant denied each debt alleged in the SOR and then disputed each debt. He provided no evidence that he had a valid explanation for his dispute, and after the debts were validated, he failed to resolve them. AE ¶ 20(e) does not apply.

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 commonsense 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 56 years old. He was aware he had delinquent debts, but decided he was not going to pay them and instead disputed them all. When some were validated, he still refused to pay them. He testified untruthfully when he denied he never had an account

with the creditor in SOR ¶ 1.e, until he was confronted with his own evidence, and then begrudgingly admitted owing the debt. He has decided he will not pay most of the debts. He will look into paying one debt because he does not want his checking account closed with the same creditor. It has been six years since Applicant was unemployed. Applicant's conduct and untruthful testimony raises questions about his judgment, reliability, and trustworthiness. He has an unreliable financial track record and has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.i:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge