



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



In the matter of:)	
)	
)	ISCR Case No. 19-02020
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

August 18, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations) and Guideline G (alcohol consumption). The original SOR alleges that Applicant has 24 delinquent debts totaling over \$1,000,000. Department Counsel amended the SOR by adding two additional debts totaling about \$50,000. The SOR also alleges Applicant was twice arrested for driving under the influence of alcohol within a nine-month period in 2014 and 2015. Applicant provided substantial evidence to mitigate the Guideline G security concerns alleged in the SOR, but he provided insufficient mitigation evidence regarding the Guideline F allegations. Accordingly, national security eligibility for access to classified information is denied.

Statement of the Case

On July 20, 2018, Applicant submitted a security clearance application (SCA) seeking to renew a previously granted clearance. On December 13, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines F and G. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6,

Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on January 15, 2020, (SOR Answer). He elected to have his case decided on the written record, in lieu of a hearing. He admitted the 24 SOR allegations under Guideline F and the five allegations under Guideline G. He also provided explanations, details, and other comments on each allegation. In addition, he attached nine documents to his SOR Answer, which I have marked as Applicant Exhibits (AE) A through I.

On February 20, 2020, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included 11 attached documents identified as Items 1-11. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections, submit a written response, and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He was advised in the FORM that he had 30 days from his receipt of the FORM to submit his response.

Applicant received the FORM on March 5, 2020. His response was due on April 4, 2020, but he did not submit a rebuttal or any additional documents. A forwarding memorandum, dated June 12, 2020, contained an ambiguity as to whether Applicant submitted a response to the FORM. I sought clarification of the ambiguity from Department Counsel. He advised in an email that he reviewed the file, and he confirmed that the file does not include a response from Applicant to the FORM. I have included a copy of that correspondence in the file as Administrative Exhibit I.

The case was assigned to me on January 15, 2020. In the absence of any objections, I have admitted into the record all of the evidentiary submissions of both parties.

Amendment to the SOR

In his FORM, Department Counsel amended the SOR by adding the following two additional allegations under Guideline F:

¶ 1.y. You are indebted to BizFi funding (sic) in the approximate amount of \$32,971. As of the date of the statement of reasons (sic), this debt remains unpaid

¶ 1.z. You are indebted to Fox funding (sic) in the approximate amount of \$17,209. As of the date of the statement of reasons (sic), this debt remains unpaid.

Applicant disclosed both debts on his SCA, although neither debt is listed on the Government's credit reports in evidence. The basis for the Government's amendment is the fact that Applicant noted both debts in his SOR Answer. He also attached letters from the creditors regarding proposed settlements, though he did not provide documentary proof that he had made any payments towards the debts. The factual circumstances are addressed further in the Findings of Facts section, below.

Applicant did not respond to the FORM, so he therefore did not either "admit" or "deny" either SOR ¶¶ 1.y or 1.z. As Department Counsel requests in his FORM, I will consider the allegations in SOR ¶¶ 1.y and 1.z to be denied, and hold the Government to its burden of proof as to those new allegations.

Findings of Fact

I have incorporated Applicant's admissions in his response to the allegations set forth in SOR ¶¶ 1.a-1.x in my findings of fact, and I have noted his comments on each allegation. For the reason stated above, I consider SOR ¶¶ 1.y and 1.z to be denied. Applicant's personal information is extracted from FORM Item 4, his SCA; Item 5, the summary of Applicant's security clearance subject interview, which he verified as accurate (Verified Subject Interview); and Item 3, his January 2020 SOR Answer. Additional findings are based upon other evidence in the record. I have noted such findings with a parenthetical citation to the record.

After a thorough and careful review of the pleadings, the Government's FORM and the documentary evidence in the record, I make the following findings of fact:

Applicant, 41, has worked as an information technology engineer for a number of companies since at least 2008. He received a bachelor's degree in information technology in December 2016. He has held a top secret clearance since December 2013, though in 2017 he was advised by a DOD agency that he was not eligible for access to sensitive compartmented information. (Item 4 at 52.)

Applicant has been married and divorced twice. Both marriages lasted about two years (2001-2003 and 2014-2016). He has three children, who were born in 1999, 2010, and 2017. He pays monthly child support of \$2,500 for his two youngest children. In his SOR Answer, he asserts that this child support obligation limits his financial ability to address his other debts. (Item 3 at 1.)

Applicant provided two different versions of his employment history during the two time periods relevant to the Guideline F allegations in the SOR. One period is the later part of 2015 (Period 1), which preceded Applicant's commencement of a business in January 2016. The business was related to Applicant's hobby and had no relationship to his information technology engineering work. The second period is 2016 through part of 2017 (Period 2), when Applicant incurred significant credit-card debts and loans to fund his business. During Period 2, he defaulted on these debts when his business "stalled"

eight months after it commenced operations and ultimately failed in 2017. (SOR Answer at 2; Item 4 at 55-57; Item 5 at 12.)

In the employment section of his July 2018 SCA (Section 13A), Applicant represented that he has been continuously employed since at least 2008. He failed to mention that he started and operated a business in 2016 and 2017. During Period 1, he listed working for Company A (November 2014 through at least the date of the SCA, July 2018) and simultaneously working for Company B (October 2014 through February 2017), and Company C (September 2010 through May 2016). He wrote that he worked for a fourth employer, Company D, from June 2014 to June 2015. His employment history in the SCA does not reflect any loss of employment or income in the second half of 2015, except for his work for Company D. (Item 4 at 13-14, 18-23; Item 5 at 4.)

In Section 26 of Applicant's SCA regarding his Financial Record, he disclosed that in Period 1, preceding the commencement of his business, he lost an "IT Contract paying him \$150,000 per year and then lost a "second job" paying him \$127,000 per year. He wrote that after the loss of these two jobs, he started his business to "generate additional income." He noted further that "the business took a turn and downward spiral (sic) extremely fast and I was unable to . . . maintain the payments" on his business debts. He also noted that his third child was born (January 2017), which "further complicat[ed] things" and that he "was also dealing with the financial fallout from [his] divorce the previous year." He finalized his divorce in March 2016. (Item 4 at 33, 37, 55-57; Item 5 at 12.)

In September 2015, Applicant moved out of his marital home and rented the residence to a friend. He purchased a new home in the same month with a mortgage in the amount of \$440,000. In his Verified Subject Interview, Applicant reported that his "financial problems began" when he lost his job with Company B in February 2017. He noted that this employment was his full-time employment. He also explained in his Verified Subject Interview that he and his business suffered a financial loss as a result of actions of a now-former friend. (Item 4 at 33, 37, 55-57; Item 5 at 12; Item 8 at 1.)

From this record evidence, it is unclear what employment losses Applicant suffered prior to starting his business in January 2016. His work for Company D ceased in June 2015. As of January 2016, he was working simultaneously at Company A, Company B, and Company C. Applicant's employment at multiple companies at the same time during Periods 1 and 2 creates some confusion in the record, which he tried to clarify in his Verified Subject Interview. Applicant's failure to list his self-employment in Section 13A of his SCA creates additional confusion. He explained in his interview that he omitted his self-employment with his business "due to oversight." (Item 4 at 13-14, 18-20; Item 5 at 4, 12.)

In his SOR Answer, Applicant asserts that many of his debts arise from his business, which ultimately failed in September 2017. He used multiple credit cards and loans to fund his startup and operating expenses for his business. He also claims that he provided some capital from his savings. He was unable to pay his business debts due to

the loss of his job with Company B in February 2017 and the failure of the business. As noted, however, he worked for Company A throughout 2017 and for other companies beginning in May 2017 to the present. He also suffered income loss from his rental property when a tenant, who was a friend, failed to pay the rent. (Item 3 at 2, 3; Item 4 at 55, 63; Item 5 at 4, 9, 12, 13.)

Guideline F:

Mortgage Debts – SOR ¶¶ 1.a and 1.b allege delinquencies on two mortgage debts: the mortgage on Applicant’s residence and a mortgage on his rental property.

SOR ¶ 1.a In his January 2020 SOR Answer, Applicant admitted that he was delinquent on his residential mortgage (SOR ¶ 1.a, a debt of \$432,371). He wrote that he fell behind in his mortgage payments due to the failure of his business. He claimed further that he had entered into a repayment plan with the lender and will have be current on his mortgage payments and past-due amounts with payments made up to and including August 2020. He provided with his Answer a letter from the lender, dated August 9, 2019, setting forth the terms of the payment plan. The plan calls for Applicant to pay his regular mortgage payment of \$2,767, plus an additional amount of \$1,820 to repay his delinquencies, starting September 1, 2019 and ending on August 1, 2020. Aside from his assertion in his Answer that he will satisfy his past-due balance on August 1, 2020, he provided no evidence showing that he made any of the required 12 monthly payments. The most recent credit report in the record, dated June 6, 2019, does not provide any useful information about the current status of this debt because it predates the payment plan. The Government provided no evidence to raise doubts about Applicant’s assertion that he was repaying the past due amounts. The debt is, therefore, resolved. (Item 8 at 1; AE A.)

SOR ¶ 1.b Applicant admitted that he was delinquent paying a mortgage on his rental property in the amount of \$375,172. In his SCA, Applicant wrote that his tenant failed to pay the rent. Applicant’s attempts to save the property from foreclosure were unsuccessful. The property was sold at auction in September 2017. He asserted that “everything was ratified and closed in March 2018.” In support of his assertion that he owes nothing further on this debt, he provided with his Answer a copy of the court’s online case information summary of the foreclosure proceeding. It reflects that on March 7, 2018, the “Final Order Ratifying the Auditor’s Report” was entered. No deficiency balance is indicated. The Government’s 2019 credit report (Item 8) reflects the foreclosure, but it does not indicate that Applicant has any further obligations to the lender. The evidence establishes that Applicant lost this property due to his default on the mortgage loan and the lender’s foreclosure of the property. The Government’s evidence does not establish that the auction of the property resulted in a deficiency or to otherwise contradict Applicant’s assertions. The debt is, therefore, resolved. (Item 4 at 56-57; Item 5 at 9; AE B.)

Credit-Card Debts - The SOR sets forth 11 allegations involving delinquent credit-card debts that were used to fund Applicant’s business. The total amount of these debts

is over \$140,000. In his SOR Answer, he provided evidence that one of these debts had been resolved (SOR ¶ 1.e). Applicant made no claim and presented no evidence that any of the remaining debts have been addressed, let alone paid. He wrote that he was paying \$1,125 per month on two business debts and that he was “nearing the end of repayment and will free up monies to go towards other debts.” He also wrote that his monthly child-support payments for two of his children was about \$2,500 and that these payments constrained his ability to repay more of his debts at that time. He asserted that he is committed to repaying all of his debts. (SOR Answer at 2-7.) In his SOR Answer, Applicant admitted each of these debts, except for one that he paid, which is:

SOR ¶ 1.e (collection account in the amount of \$17,557) – Applicant opened this credit-card account in March 2016 and defaulted in about August 2016. The creditor obtained a judgment on this debt in August 2017. Applicant submitted evidence that the judgment was satisfied in August 2019. This debt has been resolved. (Item 8 at 2; AE G at 3.)

The admitted, unpaid credit-card debts alleged in the SOR are the following:

SOR ¶ 1.c (past due on a debt of \$48,958) – (Item 8 at 2; Item 9 at 8.)

SOR ¶ 1.g (charged-off account in the amount of \$13,673) – (Item 8 at 2; Item 9 at 3; Item 5 at 10.)

SOR ¶ 1.h (charged-off account in the amount of \$13,529) – (Item 8 at 2; Item 9 at 3; Item 5 at 10.)

SOR ¶ 1.i (charged-off account in the amount of \$13,022) – (Item 8 at 3; Item 9 at 4; Item 5 at 10.)

SOR ¶ 1.j (collection account in the amount of \$11,298) – (Item 8 at 3; Item 9 at 6.)

SOR ¶ 1.l (charged-off account in the amount of \$10,637) – (Item 8 at 3; Item 9 at 5.)

SOR ¶ 1.m (charged-off account in the amount of \$7,778) – (Item 8 at 3; Item 9 at 5.)

SOR ¶ 1.n (collection account in the amount of \$3,173) – (Item 8 at 3; Item 9 at 29.)

SOR ¶ 1.o (charged-off account in the amount of \$2,425) – (Item 8 at 3; Item 9 at 5.)

SOR ¶ 1.q (collection account in the amount of \$1,268) – (Item 8 at 3; Item 9 at 6.)

Miscellaneous SOR Delinquent Debts

Applicant admitted in his SOR Answer each of the 11 miscellaneous debts. These debts total about \$66,000. Applicant made no claim and presented no evidence that any of these debts have been addressed, let alone paid, with the exception of two debts discussed below, SOR ¶¶ 1.y and 1.z.

The debts alleged at SOR ¶¶ 1.d, 1.k, 1.t, 1.u, 1.v, and 1.w remain outstanding. Applicant explained in his SOR Answer that he is paying \$2,500 in monthly child support for two of his children, as well as \$1,125 per month on two business debts (Amended SOR ¶¶ 1.y and 1.z, discussed below). These payments, he said, have constrained his ability to pay these miscellaneous SOR debts. He asserted, however that he is committed to repaying all of his debts. (Item 3 at 2-7) These six debts as well as five other outstanding debts are addressed individually below.

SOR ¶ 1.d (bank loan in collection in the amount of \$20,786) – In his SOR Answer, Applicant admitted that he owed this debt and commented that it was related to his business. (Item 3 at 2; Item 8 at 3; Item 9 at 28.)

SOR ¶ 1.f (unsecured home improvement loan in the amount of \$14,174 on the foreclosed rental property) – In his SOR Answer, Applicant admitted this debt. He wrote that the lender has been acquired by one company and then by a second company. He commented, without providing corroborating documentation, that he is seeking to determine which company owns the debt and “once that is settled a way forward can be established.” The loan has been in default since about February 2017. (Item 3 at 3; Item 8 at 2; Item 9 at 8.)

SOR ¶ 1.k (charged-off line of credit in the amount of \$10,895) – In his SOR Answer, Appellant admitted this debt was outstanding and describes this debt as a “Checking Line of Credit used to help fund and sustain my former business until its failure in 2017.” (Item 3 at 4; Item 8 at 3; Item 9 at 4.)

SOR ¶ 1.p (bank loan in collection in the amount of \$1,538) – Applicant admitted in his SOR Answer that he owed this collection account. He claimed that he was in the process of making “arrangements . . . with [the collection agency] to satisfy this debt within the next 30 days. Documentation can be provided upon collection.” His assertion was not subsequently corroborated with any documents. (Item 3 at 5; Item 8 at 3; Item 9 at 29.)

SOR ¶ 1.r (collection account in the amount of \$907 for a delinquent insurance debt) – Applicant admitted this debt in his SOR Answer. He wrote that he is “making arrangements to satisfy this account within the next 30 days” and that “[d]ocumentation can be provided upon completion.” Applicant submitted no documentation evidencing payment. (Item 3 at 6; Item 8 at 3.)

SOR ¶ 1.s (collection account in the amount of \$379 for a delinquent utility bill) – In his SOR Answer, Applicant admitted that there is a balance due on this account, which

is associated with his foreclosed rental property. He asserted that there is a dispute about who is responsible for this debt. He also wrote, however, that the balance will be paid, “within the next 30 days” and that “documentation can be provided upon completion.” He provided no additional documentation evidencing the payment of this debt. (Item 3 at 6; Item 8 at 4.)

SOR ¶ 1.t (charged-off debt in the amount of \$13,103 for a delinquent account with an equipment supplier) – In his SOR Answer, Applicant admitted this debt, which was related to his business. In his Verified Subject interview, he reported that he was working with the creditor to resolve the debt. He provided no documentation at that time or subsequently to support his claim or to evidence that he had resolved the debt. (Item 3 at 6; Item 5 at 10; Item 9 at 4.)

SOR ¶¶ 1.u, 1.v, and 1.w (charged-off debts in the amounts of \$2,139; \$1,981; and \$307, respectively, for delinquent accounts with an equipment supplier) – Applicant admitted in his SOR Answer that these business debts remained unpaid. (Item 3 at 6-7; Item 9 at 6-7.)

SOR ¶ 1.x (collection account in the amount of \$1,013 for a delinquent account) – Applicant admitted in his SOR Answer that this debt was “valid.” He commented that “there was concerns over who owed the balance as this account is related to [the foreclosed rental property.]” He noted further that “arrangement are being made to satisfy this debt within the next 60 days” and that [d]ocumentation can be provided upon completion.” He provided no further documentary evidence to show that this debt had, in fact, been paid. (Item 3 at 7; Item 9 at 29.)

SOR Allegations Added in the Amendment

SOR ¶ 1.y (\$32,971) and SOR ¶ 1.z (\$17,109) are both judgments entered against Applicant in favor of two lenders to his business. Neither judgment is listed on credit reports in the record. However, Applicant listed both debts on his SCA, though the debt at ¶ 1.y was listed as being owed to a different creditor. (SCA at 55-56.) He also addressed the status of both debts in his SOR Answer, and provided letters from the judgment creditors regarding settlement offers. (AE C; AE F)

Department Counsel amended the SOR on the basis of this information. Since Applicant did not respond to the SOR or to the FORM, I consider SOR ¶¶ 1.y and 1.z to be denied. However, the debts are established by Applicant’s own statements in his SCA and by the settlement documents he provided with his Answer.

SOR ¶ 1.y - The debt alleged at SOR ¶ 1.y was listed by Applicant in his SCA under the name of a different creditor, but that creditor and debt were not listed among the original SOR allegations. Applicant submitted with his SOR Answer a letter, dated October 22, 2018, from the lawyer of a judgment creditor agreeing to settle the debt with monthly payments commencing on November 1, 2018, and ending on or about December 1, 2022. This letter established this debt. Under this settlement, Applicant was obliged to

pay various amounts over that time period. At the time of his January 2020 SOR Answer, he was obligated to pay \$800 per month. He provided no documentary evidence that he was making these payments. In addressing other debts alleged in the SOR, Applicant asserted that he was paying \$1,125 towards two business debts. He did not identify the debts, however, he provided documents identifying this business debt and the business debt alleged in SOR ¶ 1.z. I accept Applicant's undisputed representation that he has been paying the monthly payments on the resolution of this judgment. This debt is being resolved. (Item 3 at 55-56; AE C at 1-2.)

SOR ¶ 1.z - Applicant attached to his SOR Answer a letter, dated February 11, 2019, regarding a proposed settlement agreement for the payment over time of a judgment in the amount of \$17,109 entered on September 28, 2016, against Applicant and his business by a state court in a state other than where Applicant resided and conducted his business. Under the terms of the proposed settlement, Applicant was obliged to make monthly payments in various amounts over time from February 2019 until late 2020. At the time of Applicant's January 2020 SOR Answer, Applicant was obliged to pay \$625 per month. The total of the two payments under the settlement terms of the two debts that Applicant was paying January 2020 would have been \$1,425 (\$800 plus \$625), not the \$1,125 amount Applicant claimed in his SOR Answer. Applicant provided no explanation for this discrepancy in his SOR Answer. Nevertheless, I accept Applicant's unchallenged representation that he has made his monthly payments under his settlement agreement with this judgment creditor. This debt is being resolved. (SCA at 55; AE F at 1-2.)

Guideline G:

The SOR sets forth five allegations under Guideline G regarding Applicant's two alcohol-related arrests (SOR ¶¶ 2.a and 2.b) and his participation in two alcohol awareness, recovery, and rehabilitation programs (SOR ¶¶ 2.c and 2.d). The SOR also alleges that he continued to drink alcohol until at least April 2019. In his January 2020 SOR Answer, Applicant admitted each of the allegations under Guideline G and provided some additional information. He also wrote he no longer drinks alcohol and "frequently refrain[s] from associated (sic) in places that will have alcohol." (Item 3 at 7-8.)

Shortly after midnight on November 2, 2014, the state police stopped Applicant's car after observing that Applicant and a second driver appeared to be racing at a high rate of speed. After failing a set of field sobriety tests and registering a BAC of .13 in an alcohol breath-analysis test, Applicant was arrested and charged with Driving Under the Influence (DUI) and certain other charges. Before his court case was finally adjudicated, he was arrested again for DUI on August 2, 2015. He wrote in his SOR Answer that the second arrest occurred after he was involved in a single-vehicle accident. The charges arising from the first arrest were subsequently dropped, and Applicant was given probation before judgment on his second arrest and DUI charge. (Item 3 at 7-8; Item 7 at 1-6, AE H; AE I.)

From January to March 2015, Applicant participated in an alcohol and drug recovery program. He attended six group sessions and was given a “Good” prognosis at the time of discharge. On or about November 18, 2015, after his second DUI arrest on August 2, 2015, he completed a 26-session rehabilitation program, which began on September 22, 2015. These programs are improperly alleged in the SOR as disqualifying. (SOR ¶¶ 2.c-2d.) Applicant completed a third alcohol program on March 23, 2019. He also provided evidence that he completed a three-hour alcohol awareness program on November 6, 2014, shortly after his first arrest. He has never been diagnosed as having any issues or dependencies on alcohol. (Item 6 at 2; Item 7 at 6-9.)

Applicant responded to the Government’s interrogatories on July 29, 2019, regarding his alcohol consumption. He wrote that he drank alcohol on two occasions in 2019, once on January 11, 2019, and again on April 20, 2019. He reported that the last time he drank alcohol to excess and became intoxicated was on December 14, 2018. He commented that he has removed all alcohol from his home and aspires to be the best person he can be for the sake of his youngest child. (Item 6 at 2-4.)

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 Answer and the documentary evidence in the record with respect to the debts alleged in SOR ¶¶ 1.a through 1.x establish the following

potentially disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”) and 19(c) (“a history of not meeting financial obligations”).

As discussed above, Applicant did not answer the SOR amendment and did not respond to the FORM, so I consider SOR ¶¶ 1.y and 1.z as denied. However, the record evidence includes statements from Applicant about the debts, both judgments to lenders, and related documentation. That evidence is sufficient to establish that AG ¶¶ 19(a) and 19(c) apply to SOR ¶¶ 1.y and 1.z, as well.

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(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 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24. 2013), the Appeal Board explained an applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

The record evidence does not support application of AG ¶¶ 20(a) or 20(e). Applicant's debts are numerous, recent, and most remain outstanding. AG ¶ 20(a) does not apply. Although he suggests that two debts are disputed because there are questions about the identity of the legal owner of the debt (see SOR ¶¶ 1.s and 1.t, above), he provided no documentation to substantiate the basis of the disputes or actions he has taken to resolve the disputes. In both cases, he committed in his SOR Answer to pay the debts in 30 or 60 days, which shows that the debts are not really disputed. Thus, AG ¶ 20(e) does not apply to them.

AG ¶¶ 20(b) and 20(d) have partial application. Most of Applicant's debts arose because of the failure of his business. He also claims that he suffered some income loss when he lost one of his jobs. He incurred other losses when a tenant did not pay the rent on Applicant's rental property and when a friend took money from his business. Applicant can claim that his debts arose due to circumstances beyond his control and that he is making a good-faith effort to resolve some of his debts. Full application of these mitigating conditions, however, also requires that Applicant provide evidence that he has acted responsibly under the circumstances and that he is acting in good faith to resolve his debts. Applicant began a business largely by using significant amounts of borrowed funds from credit cards and loans. The rapid failure of the business suggests that Applicant did not have a realistic and responsible business plan when he started this business and incurred these debts. Moreover, Applicant has not provided any evidence of a plan to repay his extraordinarily large number of debts. He presented evidence that he has made a good-faith effort to pay three of his many business debts (SOR ¶¶ 1.e, 1.y, and 1.z) and the mortgage debts at SOR ¶¶ 1.a and 1.b are also resolved. He also wrote in his SOR Answer that he intended to pay five small debts in the near future (see SOR ¶¶ 1.p, 1.r, 1.s, 1.t, and 1.x, above). He did not, however, provide any evidence that he paid these debts.

Applicant wrote that he is committed to paying all of his debts, but he commented that his financial resources are limited by his large child-support obligations. As noted above, the burden is on Applicant to submit evidence of his actions and his plans for repaying his debts. He has not provided a specific plan for repaying his numerous outstanding debts. Overall, he has not met his burden to justify full application of the mitigating conditions set forth in AG ¶¶ 20(b) and 20(d).

Guideline G, Alcohol Consumption

The security concern under this guideline is set out in AG ¶ 21 as follows:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant's admissions in his SOR answer to the allegations in SOR ¶¶ 2.a and 2.b and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The following mitigating conditions are potentially applicable:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Both mitigating conditions fully apply. Applicant has had no arrests related to his use of alcohol since August 2015. The circumstances surrounding Applicant's two DUI arrests showed poor judgment at that time. Since then, and particularly since 2019, Applicant has shown more mature, reliable, and trustworthy behavior with respect to his use of alcohol. He has acknowledged his past misuse of alcohol and has demonstrated a clear and established pattern of modified consumption and even abstinence following his multiple alcohol awareness classes. These actions provide substantial evidence that he has taken steps to overcome his past poor judgment with respect to his consumption of alcohol. AG ¶¶ 23(a) and 23(b) fully apply, and Applicant has mitigated the security concerns raised by his two past arrests for driving after drinking excessive amounts of alcohol.

Whole-Person Concept

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.

I have incorporated my comments under Guidelines F and G in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Additional comments are warranted. Applicant voluntarily started a business based upon a hobby and financed the business with a large amount of credit-card debts and loans. Within months, the business "stalled" and then closed with Applicant deeply in debt and defending lawsuits filed by three creditors. Applicant paid one judgment and entered into payment plans to resolve the other two lawsuits. He did not, however, present a plan for how he was going to pay or otherwise resolve the remaining debts within a reasonable period of time. Without evidence of such a plan, Applicant has not shown that he has acted responsibly under the circumstances he faced. Applicant has not satisfied his burden to establish mitigation of the serious security concerns raised by his significant indebtedness to a large number of creditors.

After weighing the disqualifying and mitigating conditions under Guidelines F and G, and evaluating all the evidence in the context of the whole person, I conclude that while Applicant has mitigated the security concerns under Guideline G, he has not mitigated the security concerns under Guideline F raised by his delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.x	Against Applicant
Subparagraphs 1.y and 1.z:	For Applicant
Paragraph 2. Guideline G:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge