



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-03179
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
 For Applicant: *Pro se*
 05/26/2020

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 5, 2017. On December 18, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 16, 2020, and requested a decision on the written record without a hearing. On January 30, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 8. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on

February 3, 2020, and timely submitted his response on February 29, 2020, to which the Government did not object. Applicant did not object to any of the Items included in the FORM. Items 1 through 3 contain the pleadings in the case. Items 4 through 8 are admitted into evidence. Applicant's FORM response included documents that I admitted into evidence as Applicant Exhibits (AE) A through M. The case was assigned to me on March 11, 2020.

Evidentiary Matter

Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 5 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 5 could be considered as evidence in his case. Applicant did not raise an objection to Item 5 in his FORM response or otherwise.

Findings of Fact

Applicant is 57 years old. He has two adult children from his first marriage. He and his second wife have been married since 2003. He earned a bachelor's degree in 1984. He served honorably in the U.S. Marine Corps from 1984 through 1986 and from 1990 through 2004. Since 2004, he has worked intermittently for a government contracting company owned by his wife (Company A). He was granted a DOD security clearance in 2008. He has worked full time for Company A since 2018. Another company, for whom he has not begun working, sponsored this pending security clearance application. (FORM response; Items 4, 5)

The SOR alleged Applicant's eight delinquent debts totaling \$67,772, which were confirmed by the credit reports. In his SOR answer, Applicant admitted each of the alleged debts, but disputed that any of them remained unresolved. However, the record evidence established that only three SOR debts had been resolved. (Items 3, 6-8)

Applicant initiated contact with the creditor of the debt alleged in SOR ¶ 1.a (\$33,297 unsecured-loan account) in November and December 2019. He proffered that, because the account was "closed," the creditor did not require an official payment plan and would accept a monthly payment of "any amount," which could only be scheduled three months at a time. In December 2019, he scheduled a \$25 monthly payment to be debited in January, February, and March 2020. His February 2020 credit report reflected that he made one \$26 payment. This debt remains unresolved. (AE A; AE J; AE M at 3)

Applicant negotiated a settlement with the creditor of the debt alleged in SOR ¶ 1.b (\$9,969 secured-loan account) in February 2020. He agreed to pay a total of \$6,604 via monthly payments of \$660 for 10 months beginning in March 2020. He provided

proof of the settlement agreement, but not of any payments. This debt remains unresolved. (AE F)

Applicant initiated contact with the creditor of the debt alleged in SOR ¶ 1.c (\$8,664 unsecured-loan account) in December 2019 and February 2020. He proffered that the creditor would not accept any payments pursuant to a statute of limitations under state law. This debt remains unresolved. (AE A, L)

Applicant negotiated a settlement with the creditor of the debt alleged in SOR ¶ 1.d (\$5,871 credit-card account) in November 2019 and February 2020. He agreed to pay \$143 per month from November 2019 through February 2020. He increased the payment to \$172 per month beginning March 2020 in order to have the account paid off by December 2020. Applicant provided proof of a \$143 payment made in January 2020. His January 2020 statement and February 2020 credit report reflected balances of \$4,290 and \$4,146, respectively. This debt remains unresolved. (Item 8 at 1; AE C; AE M at 5)

Applicant resolved the debts alleged in SOR ¶ 1.e (\$3,369 unsecured-loan account), SOR ¶ 1.f (\$2,540 credit-card account), and SOR ¶ 1.g (\$935 credit-card account) in January 2020, March 2019, and September 2019, respectively. (AE G, K; AE M at 3, 8; Item 8 at 3)

Applicant paid \$100 per month to the creditor of the debt alleged in SOR ¶ 1.h (\$3,127 credit-card account) between June 2019 and September 2019. As of February 2020, Applicant asserted that the creditor stopped accepting payments due to a statute of limitations under state law. This debt remains unresolved. (AE H)

In November 2019 and February 2020, Applicant initiated contact with the creditor of a \$1,230 credit-card debt not alleged in the SOR. He negotiated a settlement to pay \$52 in February 2020, \$77 per month between March and November 2020, and one payment of \$69 in December 2020. He provided proof of the \$52 payment. This debt remains unresolved. (AE A, B)

In November 2019, he initiated contact with the creditor of a \$15,082 loan account not alleged in the SOR. He negotiated a settlement to pay \$8,353 via monthly payments of \$232 beginning in October 2019. He provided proof of a \$232 payment made in February 2020. This debt remains unresolved. I will consider any unalleged debts only for the purposes of evaluating mitigation and the whole person concept. (AE A, I; Item 5 at 4)

The SOR debts became delinquent between 2016 and 2017. Without providing specific details or corroborating documents, Applicant attributed those debts to income losses that he and his wife suffered between 2014 and 2017. Following a 2014 work injury, his wife has struggled with chronic health issues that have affected her ability to work. She was initially rendered unable to work for approximately eight months. Since then, she has only been able to resume part-time work, which does not provide “any significant income to the household.” Additionally, Applicant spent several months in

2016 working remotely to help his mother care for his ill father and, once he passed away, settle the estate. During that time, he provided unspecified financial assistance to his mother. Finally, Applicant was laid off by his employer of five years in July 2017. While he regained employment in October 2017, he did so at a lesser salary. (Items 3, 4; FORM response)

Applicant previously experienced financial problems due to Company A's financial instability following the 2008 global recession and 2013 federal government sequestration. A steady decline in contract awards beginning in 2009 eventually led to a complete loss in 2013. In order to try to keep Company A afloat in the interim, he and his wife incurred significant debts. Without providing specific details or corroborating documents, he averred that he was able to manage and eventually resolve those debts with the assistance of a debt consolidation company. Applicant has chosen to manage the SOR debts on his own with his family's increased income. (Item 5 at 6; FORM response at 3)

Applicant's wife received a worker's compensation settlement of an unspecified amount, which "helped bridge [them] in 2016." Without providing a specific breakdown or corroborating documents, he asserted that he and his wife settled or paid off approximately \$870,000 of debt between 2009 and 2019 (prioritizing his wife's debts first and then their joint debts), including short-selling their home, paying non-delinquent federal income taxes to the IRS pursuant to an installment agreement, and "many other" unspecified secured and unsecured debts. He declared that, as of at least January 2020 (and for a prior period not specified in the record), his wife has been receiving monthly disability compensation "in excess of \$3,000" after qualifying for a 100% disability rating from the U.S. Department of Veteran's Affairs for an injury sustained while she served in the Army. In February 2020, Applicant described his income from Company A as "more income" than he had been receiving from previous employers for whom he worked between 2012 and 2018. He provided no more specific details about his and his wife's relevant income history. The record evidence also contained scant corroborating details and documents concerning his family's relevant expense history. (Item 3; FORM Response)

Applicant's current repayment strategy has been influenced by a nationally recognized financial counseling program. He explained that the goal of the program's snowball plan is to establish a small savings first, and then tackle each debt from smallest to largest. He attributed his delay in resolving the SOR debts primarily to a lack of sufficient income and his creditors' unwillingness to accept partial payments. He declared that he had enough income to begin addressing his SOR debts as of October 2019 and that, as of February 2020, he had budgeted \$1,142 per month to pay off his SOR debts. (FORM Response; Item 3)

In his FORM response, Applicant maintained that he had "not felt this confident in [his] career or financial future in ten years." He anticipated that Company A's income opportunities will continue growing. He wished to remain eligible for a security clearance so that he can "contribute at an even greater level to our nation's success and security."

He volunteers in a leadership position with an organization involved with national policy and infrastructure resilience readiness.

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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The concern under this guideline 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

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

Applicant's admissions and his credit reports establish the following disqualifying conditions: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

The following are potentially applicable factors that could mitigate the security concerns raised in the SOR:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20 (c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant resolved the debts alleged in SOR ¶¶ 1.e through 1.g – the latter two before the SOR was issued. Thus, I find those allegations in his favor. However, he did not meet his burden to establish mitigation as to the remaining SOR debts.

AG ¶ 20(a) is not established. Applicant has a significant amount of debt that remains unresolved, including SOR debts totaling \$60,928 and unalleged debts totaling \$16,312.

AG ¶ 20(b) is not established. Applicant proffered compelling circumstances that have undoubtedly had both a monetary and nonmonetary impact on his family. However, he did not meet his burden to establish that the SOR debts were accrued (and have persisted) largely due to those circumstances, or that he acted responsibly to address them.

AG ¶ 20(c) is not fully established. Applicant is commended for working with a debt consolidation company to address a prior period of financial difficulty and for utilizing a nationally recognized financial counseling program to develop a debt resolution plan to address his SOR debts. However, he did not establish that his finances are under control at this time.

AG ¶ 20(d) is not fully established. While reliance on the running of his state's statute of limitations could be a legally permissible option for Applicant to avoid repaying the debts alleged in SOR ¶¶ 1.c and 1.h, it would not demonstrate a good-faith effort within the meaning of AG ¶ 20(d). However, he is credited with his efforts to resolve debts both before and after issuance of the SOR. In March 2019, Applicant resolved a \$2,540 credit-card debt (SOR ¶ 1.f). From June 2019 through September 2019, he paid \$400 toward resolving a \$3,217 credit-card debt (SOR ¶ 1.h). In September 2019, he resolved a \$935 credit-card debt (SOR ¶ 1.g). Between November and December 2019, he initiated contact with the creditors of the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d. In January 2020, he paid \$26 toward resolving the debt alleged in SOR ¶ 1.a. In February 2020, he paid \$232 toward resolving the unalleged \$15,082 loan debt. From November 2019 through February 2020, he paid at least \$572 toward resolving a \$5,871 credit-card debt (SOR ¶ 1.d) and documents in the record suggest that he may have made additional payments totaling \$1,143. Due to the lack of specific information and corroborating documents, I am unable to fully consider the \$870,000 of debts that he

purportedly resolved between 2009 and 2019 and how it may have impacted his ability to repay his SOR debts.

Even if the evidence was sufficient for me to conclude that Applicant's financial situation did, in fact, preclude him from repaying his SOR debts until October 2019, the record evidence falls short of establishing a meaningful track record of regular and timely payments or otherwise demonstrating that he is able to follow through with his plan for repaying the remaining SOR debts; and that his indebtedness is not likely to recur. Given that the SOR debts became delinquent between 2016 and 2017, Applicant's delay in addressing his debts raises questions, about his reliability, trustworthiness, and good judgment not sufficiently answered in the record, that I must resolve in the Government's favor.

I have considered the progress that Applicant has made in tackling his delinquent debts and the fact that he is not required to be debt-free in order to qualify for a security clearance. However, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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.d:	Against Applicant
Subparagraphs 1.e – 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge