DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03111
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

December 10, 2020

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Decision

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GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant's testimony, national security eligibility for access to classified information is denied.

Statement of the Case

On December 3, 2018, Applicant filed a security clearance application (SCA). The Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on November 22, 2019, detailing security concerns under Guideline F (Financial Considerations). The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the Department of Defense on June 8, 2017.

On December 23, 2019, Applicant answered the SOR in writing (Answer). He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 11, 2020, the case was assigned to me. The hearing was delayed due to the Covid-19 pandemic. DOHA issued a notice of hearing on October 1, 2020, scheduling the hearing for October 30, 2020.

I convened the hearing as scheduled. Department Counsel presented five proposed exhibits, marked as Government Exhibits (GE) 1 through 5. I marked Department Counsel's exhibit list as Hearing Exhibit I.

Applicant offered no documentary evidence at the hearing, but requested additional time to submit proposed exhibits after the hearing. I granted his request and gave him a deadline of November 13, 2020. I also provided Department Counsel with the same opportunity to supplement the record. On November 13, 2020, Applicant emailed ten proposed exhibits to DOHA, which I marked as Applicant's Exhibits (AE) A through J. I also marked Applicant's emails as Hearing Exhibit II. Department Counsel made a timely submission of one exhibit, which I marked as GE 6. The record closed on November 13, 2020. (Tr. at 12-22, 66.)

Absent any objections, I have admitted all exhibits into the record. DOHA received the hearing transcript (Tr.) on November 10, 2020.

Findings of Fact

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, including Applicant's admissions in his Answer to all six of the SOR allegations, his testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant, 40, has been employed by a U.S. Government contractor as an assessment director since November 2018. He has never been married and has no children. In 2006, he earned a bachelor's degree. His December 2018 SCA is his first application for a security clearance. (Tr. at 24-27, 60.)

Financial Considerations

Applicant first experienced financial problems in 2016 or 2017 when the IRS audited his 2011 and 2012 income tax returns and determined that he owed $17,000 in unpaid taxes. Applicant paid the tax debt by borrowing the funds from a bank. He noted an error in the summary of his February 17, 2019 background interview (GE 2) that reported he said that this loan was used to pay for courses in stock-option trading. The Government's credit reports in the record reflect that this loan was opened in February 2017. (Tr. at 64-65; GE 2 at 3; GE 3 at 4.)

As explained below, Applicant opened a number of credit-card accounts in July 2017 to pay for educational courses in get-rich-quick schemes. His financial problems worsened in March 2018. Applicant purchased a Bitcoin option for $250 from a foreign online trading operation that advertised on social media. Within a month, the online trader reported that the value of Applicant's investment had grown to almost $100,000. At one point in his testimony, Applicant said that he invested additional money into his Bitcoin account, which partially explained the astronomical growth of his modest initial investment. Applicant sought to withdraw his money and was advised that he needed to pay $7,000 and subsequently, another $4,000 in "transaction taxes." He paid these amounts, but stopped when more was demanded. He never received anything from this investment. He believes that he was the victim of a scam. (Tr. at 32-40, 53, 58, 64.)

Applicant overdrew his line of credit with a credit union to make the two payments, totaling $11,000. He testified that he panicked and sought the advice of a credit counselor, which was in fact a credit-consolidation company. The counselor recommended that he strategically default on repaying the line of credit and all of his other debts even though he could afford to pay these debts. The "strategy" behind this advice was that the credit counselor would use the defaults as leverage over the creditors to negotiate repayment terms for less than the amounts of the individual debts, thereby reducing his debts. Applicant was required to pay $689 per month to the debt-consolidation firm. Part of these payments were fees to the company and the balance was to be used to pay his debts over time. He followed this advice and stopped paying his debts in mid-2018. As it turned out, most of Applicant's payments was applied to the counselor's fees. None of the money was paid to a creditor. Applicant recognizes now that his strategic default on his debts was a mistake since he could have simply used this money to pay his debts. (Tr. at 32-40, 61-63.)

In January 2019, Applicant switched to a different financial counselor who only charged him $89 per month. For these fees, this counselor has disputed Applicant's debts and in the future will negotiate with his creditors to seek a reduction in the amounts owed and payment plans to pay the debts over time. Applicant has not repaid any of his debts through this new counselor. More recently, he has been primarily focused on attempting to generate additional income through a side business venture to pay down his debts. (Tr. at 32-40.)

The Six Admitted Debts Listed in the SOR

SOR ¶ 1.a, Bank Loan Charged Off in the Amount of $18,447. Applicant used the funds from this loan to pay his tax debt for tax years 2011 and 2012. He defaulted on the loan in May 2018. The bank charged the debt off in the amount of $17,607 in October 2018. After the hearing, Applicant developed a plan with the advice of his second credit counselor to resolve his debts (the Plan). He submitted the Plan with his other post-hearing evidentiary submissions. With respect to this debt, he writes in the Plan that he will pursue a pending lawsuit in which he contests the validity of this debt under the Federal Fair Debt Collection Practices Act (FDCPA). He provided no evidence showing the legal basis for this claim. He submitted a discovery request and an email from a lawyer

regarding a dispute with a collection agency and two lenders unrelated to the creditor identified in this SOR allegation. The claim made in the documents may be asserted under the FDCPA, but the documents do not specifically refer to the FDCPA. The exhibits do not show that this evidence related to the bank loan referenced in SOR ¶ 1.a or what the basis of the claim was with respect to this specific debt. Also, Applicant did not testify about a legal claim he was pursuing in defense of this creditor's debt or that there was a pending lawsuit regarding this debt. **This debt is not resolved.** (Tr. at 28, 65; AE D, E, H.)

SOR ¶ 1.b, Credit Union Line of Credit Charged Off in the Amount of $17,870. Applicant opened this checking account line of credit in July 2017 with a limit of $15,000. He overdrew the line of credit when he paid "transaction taxes" to the Bitcoin trader. He defaulted on this debt in October 2018. The credit union charged off the debt in the amount of $17,865. Under Applicant's November 2, 2020 Plan, he will repay one debt at a time starting with the smallest debts first. At a future date, he hopes that his counselor can negotiate a payment plan to repay this debt in the amount of $7,146. Applicant provided no basis to support this figure in his Plan as a realistic and possible settlement. No payments have been made as of the close of the record because Applicant lacks the necessary funds. The timing of the commencement of any future payments is unknown at this time. **This debt is not resolved.** (Tr. at 42-43; GE 3 at 4; GE 6 at 5; AE E.)

SOR ¶ 1.c, Credit Union Credit-Card Account Charged Off in the Amount of $8,205. Applicant opened this credit-card account in July 2017. He last paid on this account in May 2018. The credit union charged off the debt in the amount of $8,205. Under the Plan, Applicant began paying this debt with a $100 payment on November 3, 2020, to the creditor's collection agency. He is scheduled to continue paying $100 per month for the next five months. In his Plan, Applicant claims that the creditor will or has accepted a repayment of this debt in the total amount of $3,282. The figure of $3,282 is the amount of a settlement offer set forth in a letter from the credit union dated May 12, 2020, for a one-time, immediate payment. Alternatively, the credit union offered to accept "minimum payments of $82 a month until **the entire balance** is repaid." (Emphasis added.) Applicant offered no evidence that the credit union has accepted monthly payments of $100 on the reduced amount of $3,282. After the hearing, Applicant has made one payment of $100. **This debt is not resolved.** (Tr. at 44-46; GE 3 at 5; GE 6 at 3-4; AE E, F, J.)

SOR ¶ 1.d, Credit-Card Account Charged Off in the Amount of $8,149. In July 2017, Applicant opened this credit-card account. He defaulted on the account in October 2018. The creditor subsequently charged off the account in the amount of $8,149 and filed a lawsuit to collect the debt. Applicant does not list this debt in his Plan. Instead, he provided a legal pleading, dated July 29, 2020, in which his defense attorney "requested" the dismissal of the lawsuit "without prejudice." Neither the pleading nor Applicant's post-hearing submission explains the basis for this request. The record is silent regarding the current status of this lawsuit. Applicant made no mention of this lawsuit in his testimony regarding this debt. **This debt is not resolved.** (Tr. at 46-47; GE 3 at 6; GE 4 at 2; AE E.)

SOR ¶ 1.e, Credit-Card Account Charged Off in the Amount of $6,871. Applicant opened this credit-card account in July 2017. He defaulted on the account in February 2019. The creditor subsequently charged off the account in the amount of $6,871. In the Plan, Applicant comments that his credit counselor "will help negotiate [a] payment plan with [this creditor.]" **This debt is not resolved.** (Tr. at 47-48; GE 3 at 5; GE 4 at 2; GE 5 at 2; GE 6 at 2; AE E.)

SOR ¶ 1.f, Collection Account in the amount of $5,178. Applicant opened this credit-card account in July 2017. He defaulted in February 2019. The creditor charged the account off in the amount of $5,184 and transferred it to a collection agency. The most recent credit report in the record reflects a debt of $5,178. Applicant's Plan comments that this debt, as with the one listed in SOR ¶ 1.e, will be the subject of future negotiations of a payment plan. The collection agency has recently made a settlement offer to Applicant. **This debt is not resolved.** (Tr. at 51-52; GE 3 at 6; GE 4 at 2; GE 5 at 3; GE 6 at 2, AE E.)

Applicant testified that he opened several of the listed credit-card accounts in July 2017. He used the credit to pay for courses in various entrepreneurial areas that he hoped to pursue to increase his income above the $77,000 annual income he earns working for his clearance sponsor. He explained that he "had shiny object syndrome" at that time. He acknowledged that he "overleveraged" his credit cards while attempting to find a business venture that would quickly make him rich. He spent a substantial portion of his new credit-card debt of about $25,000 on these courses in 2017 and 2018. He figured he would pay off this new debt with the profits from his new business venture. He described the courses as "mentorships" in which he learned marketing, sales, and professional communication. He claims that he learned valuable new skills that he is using now in his real estate brokering business. (Tr. at 47-51, 55.)

The subjects of the courses varied from online retail sales to life insurance sales to wholesale real estate brokering. He is currently pursuing a second career in the wholesale real estate business and has earned his first fee "flipping" contracts to purchase homes and reselling the contracts to other buyers. He earned $2,500 on this transaction, which he hopes to duplicate with more and larger transactions. Applicant took a mentorship course in May 2019 to learn about this business opportunity. He pays an assistant $60 per week to identify potential real estate purchases. His business model depends on two prerequisites, one, finding properties that are not listed for sale and can be bought cheaply, and two being able to resell the purchase contracts to a third party at a profit so he does not have to purchase and own the property or default on the transaction. He did not explain this plan in detail, but he may pre-sell the sales contract to a buyer before he contracts to purchase a home to reduce the risk. Applicant testified that he expects to make significant additional income with this business that he can use to pay his debts more quickly in the future. Like all of his other businesses, starting with the Bitcoin investment, they appear to be "get rich quick" schemes that may or may not actually produce any significant income. Applicant testified that he does not gamble. His business activities have produced little income to date. (Tr. at 27-32, 47-59.)

Character Reference

Applicant submitted a character reference letter written by a member of his church. The writer has known Applicant since 2007. She commented that Applicant has been active in a number of their church's outreach programs that benefit their community and far beyond. She describes Applicant as "an honest, reliable hardworking Christian that values integrity and humanity," as well as a person of good character, integrity, and a "good heart." (AE C.)

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 her SOR response and testimony and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

AG ¶ 19(a) ("inability to satisfy debts"),

AG ¶ 19(c) ("a history of not meeting financial obligations"), and

AG ¶ 19(e): ("consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness,

significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant has had significant financial issues since 2017. He made a serious mistake taking the risk of a strategic default hoping to reduce his debts or at least postpone the payment of his debts. His speculative spending on mentorship programs he could not afford was irresponsible. These facts are sufficient to support the application of the above disqualifying conditions and shift the burden to Applicant to mitigate the Government's security concerns.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Five of them have possible applicability to the facts of this case:

> 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;
>
> AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue 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.

None of the above mitigating conditions apply. Applicant's debts are current, frequent and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not established.

The conditions that resulted in Applicant's financial problems were solely of his own making. He overdrew with credit line to make payments in an attempt to collect his very dubious Bitcoin profits before he figured out that he had been defrauded. To the extent that Applicant's Bitcoin scam losses are analogous to "clear victimization by

predatory lending practices or identity theft," Applicant did not acted responsibly under the circumstances. He paid the fraudulent charges with borrowings that exceeded that amount of his credit line and subsequently decided to default on his credit-line debt even though he could have continued to pay it. AG ¶ 20(b) is not established.

Applicant took the advice of a financial "counselor" to "strategically default" on his debts in the hopes of negotiating repayments of reduced amounts at a later date. There is no evidence in the record that the counselor was a "legitimate and credible source, such as a non-profit credit counseling service." The strategy called for the counselor to profit off of the large monthly fees paid to it by Applicant before any debts were repaid. Applicant eventually realized this was a bad strategy and cancelled his contract with the counseling company. He then began working with a second counseling firm that charged $100 per month. This arrangement had the result that Applicant would again not be able to make any significant payments on his large debts. Also, there is no evidence that this current financial counselor is a legitimate and credible source. Moreover, there are no clear indications that Applicant's financial indebtedness is being resolved. His speculative business venture in real estate is not a reliable source of funds that will permit him to repay his creditors reliably in the future pursuant to payment plans to be negotiated. AG ¶ 20(c) is not established.

Applicant has not initiated and is not adhering to a good-faith effort to repay his creditors. His Plan was not submitted until after the hearing, and he has only made one payment of $100 to one creditor under the terms of the Plan. All of the debts in the SOR are unresolved. AG ¶ 20(d) is not established.

Although Applicant admitted all of the debts in his Answer, he now claims in his Plan that he is disputing a lawsuit on one SOR debt and makes no reference in the Plan to a debt that is the subject of a second lawsuit. He has provided no evidence that he has a reasonable basis to dispute either debt and has not documented the basis of his disputes. AG ¶ 20(e) is not established.

In light of the record as a whole, Applicant failed to carry his burden to establish mitigation of the security concerns raised by his delinquent debts. Paragraph 1 is found against Applicant.

Whole-Person Analysis

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), specifically:

> (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 applied the adjudicative factors in AG ¶ 2(d). After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his indebtedness.

Formal Findings

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through1.f: Against Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge