



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-04048
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
 For Applicant: *Pro se*
 02/17/2021

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 security clearance applications on August 2, 2018 and October 21, 2019. On August 19, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 September 11, 2020, and requested a decision on the written record in lieu of a hearing. On October 26, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 7. 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 November 4, 2020, and did not respond. The case was assigned to me on January 14, 2021.

Procedural Matter

On February 1, 2021, the Government proffered a copy of Item 6, which was inadvertently omitted from the FORM previously submitted and sent to Applicant. With notice to both parties, I reopened the record to provide Applicant with an opportunity to respond, including by providing any additional documents or information that he wanted me to consider in his case. Applicant did not respond in the allotted time so I closed the record on February 5, 2021. I appended copies of the emails exchanged concerning this issue to the record as Administrative Exhibit (AE) I.

Evidentiary Matters

Item 1 contains the pleadings in the case. Items 2 through 7 are admitted into evidence. Item 7 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 7. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 7 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 7 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 7 could be considered as evidence in his case. Applicant neither responded to the FORM nor otherwise raised an objection to Item 7.

Findings of Fact

Applicant, age 30, is married with four minor children. He earned his high school diploma in 2008. He honorably served on active duty in the U.S. Marine Corps from 2008 through 2018. Following his discharge, he has been employed by two defense contractors: as an electronic maintenance technician from July 2018 through October 2018; and as a communications radio technician since October 2018. He has maintained a DOD security clearance since 2008. (Items 2, 3, 7)

The SOR alleged twelve delinquent debts totaling \$41,546. In his SOR answer, Applicant admitted the following four allegations: SOR ¶¶ 1.d (\$2,592), 1.e (\$1,447), 1.h (\$643), and 1.i (\$357). He denied the other allegations. Each SOR allegation was confirmed by one or more of his credit reports. (Items 1, 4-6)

Applicant admitted that he received a loan in 2009 from the creditor alleged in SOR ¶ 1.a. However, he denied the debt alleged in SOR ¶ 1.a on the basis that the loan account was repaid in full via monthly allotments from his military pay between 2009 and 2011. He filed a dispute to have the debt deleted from his credit reports. Although the debt was not deleted, the dispute was noted on his October 2020 credit report. A reduced balance of \$4,910 (which was not explained in the record) was also reported. (Item 1 at 4; Item 6 at 3)

Applicant acknowledged that his wife received a loan in her sole name from the creditor alleged in SOR ¶ 1.b at some point not specified in the record. He did not indicate whether his wife satisfied that loan. However, he denied the debt alleged in SOR ¶ 1.b on the basis that he did not have an account with the creditor in his individual name or jointly with his wife. The debt alleged in SOR ¶ 1.b is reflected as an individual account on Applicant's credit reports dated September 2018 and October 2019. He claimed to have filed a dispute to have the debt deleted from his credit reports. The dispute was not documented in the record. The debt did not appear on his October 2020 credit report. (Item 1 at 4; Item 4 at 6; Item 5 at 2; Item 6; Item 7 at 7)

Applicant denied the debt alleged in SOR ¶ 1.c on the basis that the automobile loan was settled in full by insurance proceeds paid to the creditor following a total-loss accident in 2015. His automobile insurance company paid the creditor approximately \$3,000 less than the balance remaining on the loan. He was assured that his gap insurance would resolve the deficiency. Applicant claimed to have filed a dispute to have the debt deleted from his credit reports. The dispute was not documented in the record. The debt did not appear on his October 2020 credit report. (Item 1 at 4-5; Item 6)

Applicant admitted the debt alleged in SOR ¶ 1.d, which relates to a loan he received in approximately 2014 to pay for expenses associated with a family medical emergency. He claimed that he repaid the loan in full via monthly allotments from his military pay sometime between 2014 and 2016. However, in approximately 2017, he was notified by the creditor that it obtained a court judgment for a "minimal" remaining balance due, including accrued interest. He had not been previously aware that his allotments did not cover the entire balance. Since then, the interest has continued to increase the balance due. He asserted that he has been in "constant" contact with the creditor to try to negotiate a settlement. He filed a dispute to have the debt deleted from his credit reports. The dispute was noted on his October 2020 credit report, but the debt was not deleted. (Item 1 at 5; Item 2 at 38-39; Item 3 at 42-43 Item 6 at 2; Item 7 at 5-6)

Applicant admitted the debt alleged in SOR ¶ 1.e, which was a "credit builder" loan account he opened in 2018. In his September 2020 SOR answer, Applicant claimed to have initiated contact with the creditor to repay this debt. His October 2020 credit report revealed that the debt remained unresolved. (Item 1 at 5; Item 4 at 3; Item 5 at 2; Item 6 at 2-3)

Applicant acknowledged having a utility account with the creditor alleged in SOR ¶ 1.f. However, he denied the debt alleged in SOR ¶ 1.f on the basis that he returned the equipment for which he was being charged. He asserted that he completed the return in approximately November 2018 when he relocated to his present home state. Applicant claimed to have filed a dispute to have the debt deleted from his credit reports. The dispute was not documented in the record. The debt did not appear on his October 2020 credit report. (Item 1 at 5; Item 5 at 2; Item 6)

Applicant acknowledged that he currently maintains an active account with the creditor alleged in SOR ¶ 1.g. However, he denied the debt alleged in SOR ¶ 1.g on the

basis that his current account is in good standing. He asserted that he has only ever had one account with this creditor. The debt alleged in SOR ¶ 1.g is reflected as an individual account on his credit report dated October 2019. Applicant claimed to have filed a dispute to have the debt deleted from his credit reports. The dispute was not documented in the record. The debt did not appear on his October 2020 credit report. (Item 1 at 5; Item 3 at 43-44; Item 5 at 2)

Applicant admitted the debt alleged in SOR ¶ 1.h, which is a charge for carpet damage that was discovered in his military housing when he discharged from active duty in 2018. He claimed that he was unaware of the charge until he was notified by the creditor in June 2019. In his September 2020 SOR answer, he maintained that the debt was “settled and paid.” The debt remained delinquent on his October 2020 credit report. (Item 1 at 6; Item 5 at 2; Item 6 at 2)

Applicant admitted the debt alleged in SOR ¶ 1.i, which is a charge for an overpayment of his G.I. bill-related housing allowance. He claimed that he was unaware of the overpayment until his funds were garnished in January 2020. He then learned that the charge related to a one-month period when he was not enrolled in school. He maintained that he was enrolled during that period but experienced connectivity issues to his online school due to being on TDY outside of the United States. The debt was reflected as paid on his October 2020 credit report. (Item 1 at 6; Item 5 at 2; Item 6 at 5)

Applicant admitted having a bank account with the creditor alleged in SOR ¶ 1.j, which was in good standing when he closed it in 2012. He also acknowledged another joint bank account with the same creditor (that he maintained with his wife), which was in good standing when they closed it in 2018. However, he denied the debt alleged in SOR ¶ 1.j on the basis that it is unknown to him. The debt alleged in SOR ¶ 1.j is reflected as an individual account on Applicant’s credit report dated October 2019. He claimed to have filed a dispute to have the debt deleted from his credit reports. The dispute was not documented in the record. The debt did not appear on his October 2020 credit report. (Item 1 at 6; Item 4 at 6; Item 6; Item 7 at 7)

Applicant denied the debt alleged in SOR ¶ 1.k on the basis that it is unknown to him. He discovered that the debt is a women’s health clinic charge in the state where he was stationed from 2012 through 2015. During those years, all medical expenses for him, his wife, and children were covered by his military insurance plan. He claimed that he was unable to resolve the debt with the clinic directly. The clinic referred him to a collection agency, the contact information for which he averred that he has been unable to ascertain. He claimed to have filed a dispute to have the debt deleted from his credit reports. The dispute was not documented in the record. The debt did not appear on his October 2020 credit report. (Item 1 at 6; Item 4 at 6; Item 7 at 7)

Applicant denied the debt alleged in SOR ¶ 1.l on the basis that it was a duplicate of the debt alleged in SOR ¶ 1.a. He asserted that the creditor reported the same account twice. The debts alleged in SOR ¶¶ 1.a. and 1.l are reflected as two different individual accounts with the same creditor on Applicant’s September 2018 and October 2020 credit reports. Each account is reported with a different account number

and balance. There is no indication in either report that the two different accounts reference the same debt. Applicant filed a dispute to have the debt alleged in SOR ¶ 1.1 deleted from his credit reports. Although the debt had not been deleted, the dispute was reflected on his October 2020 credit report. An increased balance of \$14,756 was also reported. (Item 1 at 4, 6; Item 4 at 7; Item 5; Item 6 at 3-4)

Applicant's October 2020 credit report revealed two delinquent debts not alleged in the SOR. First, an individual utility account placed for collection in October 2019 with a \$2,406 balance. Second, a joint home rental account placed for collection in June 2019 with a \$9,069 balance. The report noted a consumer dispute for each of these debts. The record did not reflect any other information about these new debts. Because they were not alleged in the SOR, I will consider them solely for the purpose of evaluating mitigation and the whole person concept. (Item 6 at 1-2)

During his January 2019 background investigation interview, Applicant characterized his financial situation as "in debt recovery mode." During that interview, he was confronted with the debts that appeared on his September 2018 credit report, the majority of which he claimed no prior knowledge. He explained that he had not brought any financial-related documents to his interview because he lost access to them when his military email was deactivated. He affirmed that he was willing and able to repay his debts. He anticipated using the extra funds he had then recently received as hazard pay to help him resolve his delinquent debts. The record did not contain information concerning the amount of those extra funds or an allocation as to how they were applied, if at all, to his delinquent debts. He also anticipated engaging a company to help him "fix his credit." He did not proffer whether he engaged those services or otherwise received assistance with repaying his debts. (Item 7 at 9)

Applicant did not provide any documents to corroborate the claims he made in his SOR answer. He also did not proffer any information concerning his relevant income and expenses. He has not received any financial counseling. However, he took a financial class about smart spending. He believes that his maturity and other lifestyle changes will ensure that he has no future financial difficulties. Those changes include making more informed decisions, maintaining a proper debt-to-income ratio, and modifying his spending habits. He stated that he is "past the age where he wants what he sees on TV." His is now motivated by his desire to build a better life for his wife and children. (Item 7 at 9)

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); AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so); 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;

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.

Given that the debt alleged in SOR ¶ 1.i has been resolved, I find that allegation in Applicant's favor. However, he failed to establish that he successfully disputed the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.f, 1.g, 1.j, 1.k, or 1.l, or resolved the debts alleged in SOR ¶¶ 1.d, 1.e, or 1.h. He did not establish that the debts which did not appear on his October 2020 credit report were removed because he was not responsible for repayment. The mere disappearance of debts from a credit report does not, without more information, absolve him from liability. While he proffered reasonable bases for his disputes, he did not provide documented proof to substantiate them. Although his disputes of SOR ¶¶ 1.a, 1.d., and 1.l were documented, the debts were not deleted from his credit report. The other disputes were not documented.

Applicant did not establish that his debts resulted from and persisted largely due to circumstances beyond his control. He did not proffer sufficient documentary evidence to corroborate the efforts he made to address his delinquent debts. I considered that Applicant lost access to certain financial documents when his military email was deactivated. However, that does not fully relieve him of his obligation to substantiate his mitigation claims. I do not have information sufficient to conclude that Applicant exhausted all options to obtain relevant documentation. In light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns pursuant to the above mitigating factors.

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 AG, 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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