



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



In the matter of:)
)
) ISCR Case No. 20-01432
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

04/07/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not provide sufficient information about his efforts or inability to resolve four of six delinquent debts alleged in the statement of reasons (SOR) totaling \$72,086. He did not give a clear indication of how or when he planned to pay the four unresolved debts. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 8, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3). On August 31, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Item 1)

The SOR detailed reasons why the CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (Item 1)

On September 24, 2020, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 1) On October 26, 2020, Department Counsel completed a File of Relevant Material (FORM). On November 16, 2020, Applicant received the FORM. Applicant did not respond to the FORM. On March 12, 2021, the case was assigned to me.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Redacted ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/doha/isp.html>.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a-1.d with explanations, and he denied the allegations in SOR ¶¶ 1.e and 1.f. (Item 1) He did not provide any supporting documentation about the status or resolution of his delinquent debts. Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 58 years old, and he has been employed as a Configuration Analyst since September 2016. (Item 2 at 11) From July 1989 to June 2016, he was continuously employed as an Engineering Technologist II working for the same employer. (*Id.* at 12) He served in the Navy from March 1982 to February 1988. (*Id.* at 14-15) He received an honorable discharge. (*Id.* at 15)

Applicant is currently estranged from his spouse, whom he married in 1988. (Item 2 at 19) He does not have any children. (*Id.*) In 2007, Applicant received an associate's degree. (*Id.* at 10) He attended college from 2007 to 2009. (*Id.*) There is no evidence of workplace misconduct, abuse of alcohol, use of illegal drugs, or criminal conduct. He did not provide copies of performance evaluations or character-reference statements.

Financial Considerations

According to Applicant's August 29, 2018 Office of Personnel Management (OPM) personal subject interview (PSI), his budget is as follows: monthly gross income is \$6,562; monthly net income is \$4,104; monthly expenses are \$2,221; monthly debt payments are \$2,746 (comprised of mortgage (\$953), credit cards (\$1,616), and miscellaneous (\$177)); and net remainder is negative \$863. (Item 8) His spouse's income is as follows: monthly gross income is \$3,100; monthly net income is \$2,383; and monthly retirement is \$1,115. (*Id.*) Applicant and his spouse live in the same residence; however, they are estranged because of her infidelity. (*Id.*) As of August 29, 2018, he was receiving \$1,000 monthly from his spouse to address their marital debts. (*Id.*) He has not received any credit counseling. (*Id.*)

According to Applicant's SOR response, when Applicant and his wife separated, her net monthly income was \$2,000. (Item 2) For 42 months after they were separated,

she provided Applicant \$1,000 monthly for bills; however, this was insufficient to keep his debts in current status. (*Id.*) Currently, she is not providing any funds to address their debts. (*Id.*) He said he is making progress on his finances, and intends to pay his debts. (*Id.*) Applicant was unemployed for two months from July to September 2016, and his separation from his spouse and unemployment for two months contributed to his problematic financial situation. (Item 8) His most recent credit report of record shows that he paid several non-SOR debts, and several accounts are current. (Item 7)

The SOR alleges six delinquent debts totaling \$122,685 as follows:

SOR ¶ 1.a is a judgment for \$60,630 based on a debt owed to a credit union. (Item 1) The court entered a judgment in November 2018, and a garnishment order in September 2019. (Item 4) In September 2020, Applicant said he has counsel and is negotiating a reduction in the magnitude of the debt. (Item 2)

SOR ¶ 1.b is a judgment entered in 2018 for \$38,913 based on a debt owed to a credit card entity. (Item 1) In December 2016, a Joint Stipulation of Settlement was filed with the court. (Item 5) In August 2017, a judgment was entered against Applicant for \$38,913. (*Id.*) In December 2017, a copy of the garnishment writ was mailed to Applicant's employer. (*Id.*) In September 2020, Applicant said the debt was paid down to \$1,000 through garnishment of his wages, and will be fully paid in October 2020. (Item 2) Completion of the garnishment was delayed when the address for the creditor changed without notice to Applicant's human relations department. (*Id.*)

SOR ¶ 1.c is a judgment entered in 2019 for \$11,686 based on a debt owed to a credit card entity. (Item 1) In September 2020, Applicant said the debt was paid down to \$7,000 through garnishment of his wages and will be fully paid in the spring of 2021. (Item 2)

SOR ¶ 1.d is a charged-off debt owed to a financial institution for \$7,574. (Item 1) In September 2020, Applicant said "I am attempting to make payments as I can. This should be resolved in spring 2021." (Item 2)

SOR ¶ 1.e is a charged-off debt owed to a credit union for \$2,723. (Item 1) In September 2020, Applicant said the debt was his spouse's account, and it has been paid. (Item 2) Applicant's April 8, 2020 credit report indicates the account first became delinquent in April 2017, and the creditor closed the account and charged it off. (Item 7)

SOR ¶ 1.f is a charged-off debt owed to a department store for \$1,159. (Item 1) In September 2020, Applicant said the debt was his spouse's account, and the creditor has "written [it] off." (Item 2) Applicant's April 8, 2020 credit report indicates the account first became delinquent in May 2017, and the creditor closed the account and charged it off. (Item 7)

In the FORM, Department Counsel noted the absence of corroborating or supporting documentation of resolution of the SOR debts. Aside from Applicant's uncorroborated statements, credit reports, and evidence of the judgments and

garnishments, there was no documentary corroborating evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the SOR debts. The FORM informed Applicant that he had 30 days from the receipt of the FORM **“in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.** If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely” on the evidence set forth in this FORM. (FORM at 4 (emphasis added)) Applicant did not provide any response to the FORM.

Applicant did not present any supporting documentary evidence of his current income (such as pay statements from his employer), current budget as of the date he received the FORM, receipts from creditors showing payments, or a timeline for resolving the delinquent SOR debts in SOR ¶¶ 1.a, 1.d, 1.e, and 1.f. He did not present any evidence of written offers to settle, or other correspondence to or from these four SOR creditors.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or

patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained 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 SOR alleges six delinquent debts totaling \$122,685. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Circumstances beyond Applicant's control adversely affected his finances, including about two months of unemployment in 2016, and his spouse's failure to assist with family or joint debts. However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. The supporting documentary evidence that Applicant maintained contact with creditors and attempted to negotiate partial payments to keep several SOR debts current is limited in this instance to court records leading up to judgments and garnishments of his pay.

Applicant is credited with mitigating SOR ¶¶ 1.b and 1.c. He indicated the debts were paid or are being paid through garnishment. Resolution through garnishment "diminishes the [mitigating] weight to which this evidence is entitled." See ISCR Case No. 14-05803 (App. Bd. July 7, 2016) (citing ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011)). See *also* ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009) (indicating involuntary payment of debts through garnishment is not necessarily mitigating). The

Appeal Board did not categorically exclude mitigation of debts paid through garnishment, and due to the impact of circumstances beyond on his control, I conclude he made sufficient effort to pay these two debts to mitigate them. See *generally* ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (affirming grant of security clearance and mitigating security concerns despite garnishment to pay debt because of other financial circumstances).

Several of Applicant's delinquent debts may have been or will soon be either charged off or dropped from his credit report or both. "[A] creditor's choice to charge-off a debt for accounting purposes does not affect the debtor's obligation to the creditor." ISCR Case No. 15-02760 at 3 (App. Bd. Dec. 29, 2016). "[N]on-collectability of a debt does not preclude consideration of the debt and circumstances surrounding it in a security clearance adjudication." ISCR Case No. 15-05049 at 3 (App. Bd. July 12, 2017) (emphasizing security significance of debts despite being charged off).

"[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-01111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off.

Applicant did not provide an updated personal financial statement or budget after he received the FORM. It was unclear from the budget in the August 29, 2018 OPM PSI whether he had sufficient funds to address his debts because it appeared he had a negative monthly remainder without the financial assistance of his spouse. He did not explain why the creditors filed for judgments and garnishments if he was making partial payments or acting in good faith to establish payment plans. He did not described any financial counseling. Applicant did not provide any corroborating documentation relating to the SOR debts in ¶¶ 1.a, 1.d, 1.e, and 1.f, such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve a debt; or (5) other evidence of progress or resolution.

Applicant said he planned to pay or resolve his debts, except possibly the one that originated with his spouse or was charged off and closed. He did not provide documentary evidence showing he was not responsible for any of the SOR debts. He did not indicate how much money he was saving each month to resolve the debts in SOR ¶¶ 1.a, 1.d, 1.e,

and 1.f, or when he planned to make a new settlement offer to address them. He did not provide sufficient documentation about why he was unable to make greater documented progress resolving the debts in SOR ¶¶ 1.a, 1.d, 1.e, and 1.f. There is insufficient assurance that his financial problems are being resolved. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 58 years old, and he has been employed as a Configuration Analyst since September 2016. From July 1989 to June 2016, the same company continuously employed him as an Engineering Technologist II. He served in the Navy from March 1982 to February 1988. He received an honorable discharge. In 2007, Applicant received an associate's degree. He attended college from 2007 to 2009. There is no evidence of workplace misconduct, abuse of alcohol, use of illegal drugs, or criminal conduct. He did not provide copies of performance evaluations or character-reference statements.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. He paid the debts in SOR ¶¶ 1.b and 1.c through garnishments of his wages. He paid several other non-SOR debts, and other accounts are current.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why he was unable to make greater progress resolving the four delinquent SOR debts in SOR ¶¶ 1.a, 1.d, 1.e, and 1.f, totaling \$72,086. There is no documentary evidence of ongoing correspondence with the four creditors or progress (payments or payment plans) on these four debts. His lack of

responsible financial action raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraphs 1.d, 1.e, and 1.f:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge