



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



In the matter of:)	
)	
)	ISCR Case No. 20-03699
)	
Applicant for Security Clearance)	

Appearances

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

07/12/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant stopped paying on two loans and two credit-card accounts in 2019 on the advice of a debt-resolution company. He settled three of the debts through a debt-relief program. In December 2020, he made a lump-sum payment of \$17,892 to resolve the other debt. Clearance eligibility is granted.

Statement of the Case

On January 25, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action 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 National Security Adjudicative Guidelines (AG) effective June 8, 2017, applicable to all adjudications for national security eligibility or eligibility to hold a sensitive position.

On February 5, 2021, Applicant responded to the SOR allegations and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The Government submitted a File of Relevant Material (FORM) consisting of eight exhibits marked as Items, including the SOR (Item 1) and Applicant's Answer to the SOR (Item 2). DOHA forwarded a copy of the FORM to Applicant on March 19, 2021, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on March 26, 2021, and he responded on April 11, 2021. On April 12, 2021, the Government indicated it did not object to the inclusion of his FORM Response in the record.

On May 17, 2021, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on May 24, 2021.

Evidentiary Rulings

Department Counsel submitted as Item 5 in the FORM a summary report of a personal subject interview (PSI) of Applicant conducted on June 19, 2020, by an authorized investigator for the Office of Personnel Management (OPM). The summary report was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant's attention was directed to the following notice regarding Item 5:

The enclosed summary of your Personal Subject Interview (Exhibit 5) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this [FORM], you can comment on whether the summary accurately reflects the information you provided to the authorized OPM investigator(s) and you may make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that

you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. *Pro se* applicants are not expected to act like lawyers, but they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Applicant was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the summary of his PSI, to comment on the summary, and to make any corrections, deletions, or updates to the information in the report. When Applicant responded to the FORM, he did not object to the FORM or indicate that the PSI summary contained inaccurate information. Furthermore, Government officials are entitled to a presumption of regularity in the discharge of their official responsibilities. See *e.g.*, ISCR Case No. 15-07539 (App. Bd. Oct. 18, 2018), and there is nothing in the record to indicate the summary contains information that was inaccurate or contrary to what Applicant reported.

Applicant can reasonably be held to have read the PSI summary, and there is no evidence that he failed to understand his obligation to file any objections to the summary if he did not want the administrative judge to consider it. I find that Applicant waived any objections to the PSI summary. FORM Items 1 through 8, including the PSI, and Applicant's FORM Response are accepted into the record for my consideration, subject to issues of relevance and materiality in the assessment of whether it is clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant.

Findings of Fact

The SOR alleges that, as of January 25, 2021, Applicant was past due \$2,530 on a loan balance of \$9,678 (SOR ¶ 1.a) and that he owed charged-off debts of \$20,337 (SOR ¶ 1.b), \$17,877 (SOR ¶ 1.c), and \$3,688 (SOR ¶ 1.d). (Item 1.) When he answered the SOR allegations, Applicant stated that he had not been delinquent on the accounts before he sought debt-consolidation assistance from a company that told him to close the accounts and stop making payments because the company would be handling settlements and payments for him. He asserted that he started a debt-relief program in February 2019; that the debts in SOR ¶¶ 1.a and 1.c had been resolved; and that the debts in SOR ¶¶ 1.d and 1.b would be paid off by March 2021 and October 2021, respectively.

Applicant's admissions to the delinquent debts alleged in the SOR are accepted and incorporated in the record as factual findings. After considering the FORM, consisting of Items 1 through 8, and Applicant's FORM Response, I make the following additional findings of fact.

Applicant is 51-years-old, married, and the father of a teenage daughter. Applicant reports that he served honorably in the U.S. military from May 1997 to November 2010, and was a staff sergeant from December 2008 until his discharge. Applicant held a DOD security clearance, up to the level of top secret, while on active duty. (Item 4.) Available service records reflected discrepant information about a reserve enlistment in February 2012 and general discharge under honorable conditions in September 2014, which he denies. He explained to an OPM investigator during his June 2020 PSI that he had attempted to re-enlist but was denied for medical reasons, and that his service record is inaccurate in some aspects. (Item 5.)

Applicant was unemployed from December 2010 to June 2013, while pursuing his undergraduate degree online. He supported himself in part on Department of Veterans Affairs (VA) education benefits. He earned his bachelor's degree in June 2013, and in July 2013, he started his current employment in computer support with a defense contractor. (Items 4-5.) He states that he has held a security clearance for "over 23 years." (Item 3.)

Applicant completed a Questionnaire for National Security Positions (SF 86) on May 27, 2020. In response to an SF 86 financial record inquiry concerning whether he was currently seeking assistance for financial difficulties, Applicant disclosed that he was on a "debt consolidation" program, and explained:

I went in the program with no delinquency with 2 loans and 2 credit cards. I am currently paying semi-monthly payments to the agency which they are working with the creditors. I have recently completed resolving and paying off one of the loans. This program is really helping me get back to financial stability. I am currently in good standing with all my expenses and bills which I just completed paying off one of my car[s]. (Item 4.)

As of June 10, 2020, Applicant had four delinquent accounts on his credit record. An unsecured loan obtained for \$8,910 in November 2018 became delinquent in April 2019 and was \$2,530 past due on a balance of \$9,678 (SOR ¶ 1.a). A credit-card account opened with a retailer in April 2017 became delinquent in April 2019 and was charged off for \$20,337 in October 2019 (SOR ¶ 1.b). A joint unsecured loan opened by Applicant and his spouse with a credit union in December 2017 was charged off for \$17,877 in September 2019 after no payments since March 2019. The creditor filed a lawsuit against Applicant and his spouse for the debt on July 1, 2019. (Item 8.) As of April 2020, the creditor was reporting an outstanding balance of \$21,633 (SOR ¶ 1.c). A credit-card account Applicant opened in December 2017 was charged off. As of May 2020, the creditor was reporting a balance of \$3,688 (SOR ¶ 1.d). (Items 6-7.) Applicant was making timely payments on three credit cards with respective balances of \$372, \$206, and \$2. He and his spouse were making payments of \$528 per month on a joint vehicle loan obtained

for \$36,768 in March 2017. As of May 2020, the loan balance was \$20,053. In October 2019, he paid off a \$15,935 auto loan obtained in July 2014. He had been past due 30 days three times on that loan. (Item 6.)

When asked about his finances during his June 19, 2020 PSI, Applicant explained that he and his spouse wanted to become debt free in preparation for retirement, so in the summer [sic] of 2019, he began a debt-consolidation program. The debt-resolution company told him to stop payments on the accounts in the program. He understood from the debt-resolution company that his credit report would reflect past-due balances while the company negotiated settlements with his creditors. Applicant asserted that he was paying the debt-resolution company \$767 a month in return for the company disbursing payments to the accounts in SOR ¶¶ 1.a-1.d. However, available information shows that the creditor in SOR ¶ 1.c sought a judgment against Applicant and his spouse in July 2019. (Item 8.) If that debt had been initially enrolled in the program, the creditor was unwilling to accept a negotiated settlement. Applicant characterized his financial situation as good otherwise, and he expressed the willingness and ability to repay his past-due debts. He presented no documentation to the investigator regarding the status of the delinquent accounts, even though he was provided an opportunity to do so both during and after his interview. (Item 5.)

On December 23, 2020, Applicant and his spouse paid \$17,892 in full settlement of the debt in SOR ¶ 1.c outside of the debt-relief program. (Item 3.) On January 8, 2021, the creditor moved to dismiss its case against Applicant and his spouse. A jury trial scheduled for July 7, 2021, was vacated. (Item 8.) As of March 12, 2021, Equifax was reporting the debt as “paid charge off” in January 2021 with a zero balance. (Item 7.)

On January 25, 2021, the DCSA issued an SOR to Applicant because of the delinquencies on two credit-card accounts and two unsecured loans. (Item 1.) When Applicant responded to the SOR on February 5, 2021, he reiterated that he had not been delinquent in his payments before he entered the debt-relief program in February 2019, and that he had stopped paying on the accounts on the advice of the debt-resolution firm. He indicated that he had paid off the debts in SOR ¶¶ 1.a and 1.c, and that the other two debts were being repaid through the debt-relief program into which he was then paying \$549 semi-monthly. He stated that he had learned from that situation, was living within his means and wiser in managing his debts. Applicant provided documentation from the debt-resolution company confirming he had enrolled in a debt-relief program on February 8, 2019, and, as of February 4, 2021, he was “scheduled to make regular deposits of \$549” for the purpose of paying off his enrolled debts (then SOR ¶¶ 1.a-1.b and 1.d). Payment records from the debt-relief program show that he was offered a settlement of \$2,864 on May 24, 2019, to resolve the \$9,548 balance of the debt in SOR ¶ 1.a, and that the debt was resolved through payments from June 2019 through April 2020. He also provided documentation showing that he had paid \$17,892 outside the program in full settlement of the debt in SOR ¶ 1.c. (Item 3.)

As of March 2021, the unsecured loan debt in SOR ¶ 1.a was no longer on Applicant’s credit record. The creditor in SOR ¶ 1.b was reporting a past-due balance of

\$15,250, and a recent payment on the account in February 2021 (Item 7), which corroborates Applicant's account that the debt was being paid through the debt-relief program. The creditor in SOR ¶ 1.d was reporting a balance of \$1,771 on Applicant's charged-off account with the creditor. Applicant was continuing to make timely payments on a car loan obtained in March 2017, and he had reduced the balance to \$16,213. He had only one other outstanding credit balance, which was for \$842 on credit-card account that has been current. No balance was owed on his newest credit-card account, which he had opened in February 2020. (Item 7.)

In its FORM, the Government acknowledged Applicant's settlement of the debts in SOR ¶¶ 1.a and 1.c, but submits that Applicant did not make a good-faith effort to address his debts by "strategically defaulting on the [four SOR] debts to negotiate terms that were more to his favor than the existing terms because he and his wife wanted to become debt free so that they could plan for retirement." (FORM)

In response to the FORM, Applicant provided another copy of the debt-resolution firm's records showing the settlement of the debt in SOR ¶ 1.a for 30% of its balance. He also provided records showing that the creditor in SOR ¶ 1.d agreed to settle for \$2,367 (60% of the balance at settlement) on March 10, 2020, and that the debt was settled in full through payments between March 27, 2020, and February 26, 2021. Additionally, the creditor in SOR ¶ 1.b agreed on August 28, 2020, to settle Applicant's \$20,337 balance for \$10,169 (50% of the balance). Between September 11, 2020 and April 8, 2021, payments totaling \$9,322 (\$852 on September 11, 2020, \$847 monthly from October 2020 through March 2021, and \$4,235 on April 8, 2021) were made toward the debt. Applicant asserted in his FORM response that the debt has been "resolved early [and is] pending status change April 8, 2021." A record from the debt-resolution company shows "8/8 Scheduled Payments," but also the debt phase as "in process." Seven payments of the scheduled eight show on Applicant's account with the debt-relief company as of April 8, 2021. (FORM Response.)

Applicant and his family lived with his in-laws from December 2014 through June 2018. They have rented an apartment since then. (Item 4.) Applicant provided no information about his income or monthly expenses. The monthly obligation on his car loan is \$528. He has been consistent in paying that amount or a little more. His credit report shows an actual payment of \$530. (Item 7.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines

are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated 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. . . .

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.

Available credit reports show that the accounts in the SOR first became delinquent in January 2019 (SOR ¶ 1.d), March 2019 (SOR ¶ 1.c), and April 2019 (SOR ¶¶ 1.a and 1.b). He entered into a debt-relief program in February 2019, and asserts that he relied on the advice of the debt-resolution company when he stopped paying on the accounts. Even so, the delinquencies establish the security concerns set forth in AG ¶ 19(c), "a history of not meeting financial obligations."

Application of the aforesaid disqualifying condition triggers consideration of the mitigating conditions under AG ¶ 20. Four of the seven mitigating conditions could apply in whole or in part. They are:

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

AG ¶ 20(a) cannot reasonably apply because Applicant defaulted on the accounts in the SOR too recently. There is also no indication that AG ¶ 20(b) applies. Applicant and his

spouse voluntarily sought a legal means to possibly reduce their debt balances so that they would be in a better position financially for retirement planning purposes.

Regarding AG ¶ 20(d), Department Counsel has a legitimate concern in that settlement for less than the full balance benefits the debtor to the detriment of the creditor. Applicant only repaid a percentage of the credit extended to him with respect to the debts in SOR ¶¶ 1.a-b and 1.d. He settled those debts for \$15,400. Those debts had an aggregate balance of \$29,256 when they were enrolled in the debt-relief program. He paid \$17,892 outside the debt-relief program to resolve the debt in SOR ¶ 1.c, which was a little more than the \$17,877 charged off by the creditor. Debts settled at a significant reduction do not carry as much weight in mitigation under AG ¶ 20(d) as had Applicant entered into good-faith repayment plans for the full balances. Applicant has a stronger case for mitigation under AG ¶ 20(c) in that the debts in SOR ¶¶ 1.a, 1.c, and 1.d, and possibly 1.b, have been fully resolved. Regarding the debt in SOR ¶ 1.b, the last reported payment of \$4,235 on the debt-resolution company's record may well be a lump-sum payment to pay off the settlement early. Recorded payments are \$847 short of the \$10,169 negotiated settlement, which equals one monthly scheduled payment. Applicant's documented track record of payments under the debt-relief program provides an adequate guarantee that he will make that payment to resolve the debt, if he has not done so already. It is unclear whether Applicant has had financial counseling, which is required for full mitigation under AG ¶ 20(c).

Issues of motivation, timing of debt resolution, and the likelihood of recurrence of financial problems remain relevant to the adjudication process, even when debts have been adequately resolved to where they are no longer a source of coercion or pressure for an applicant. The concerns about Applicant settling debts on terms advantageous to him are legitimate in that it shows a tendency to act in self-interest. The Government must be assured that an applicant will fulfill his or her obligations as a clearance holder, even when it may be personally inconvenient, disadvantageous, or difficult. He asserts that he acted on the advice of the debt-resolution company in stopping his payments on his accounts. Dates of delinquency are consistent with his explanation (SOR ¶¶ 1.a-1.c in April 2019 and ¶ 1.d in March 2019), although there is no documentation showing that the debt in SOR ¶ 1.b was ever enrolled in the debt-relief program, notwithstanding Applicant's SF 86 assertion to the contrary. In Applicant's favor, his financial situation appears to be stable. He made timely payments on his credit accounts before 2019, and he is not currently past due on his open credit accounts. He paid off a car loan according to terms in October 2019 and has never been late in making his payments of \$528 per month on a car loan obtained in February 2019. His financial situation no longer presents an unacceptable security concern.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

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

The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 14-03991 at 2 (App. Bd. Jul. 17, 2015). Little is known about Applicant's current income or living expenses. That said, he has a record of recent but not longstanding delinquency. The Government's case for an unwillingness to satisfy debts is not established because Applicant was enrolled in a debt-relief program when he defaulted on the accounts. The primary concern in this case is with his elimination of debt through negotiated settlements that resulted in him not fully repaying the credit extended to him. While the Government has legitimate concerns in that regard, he chose a legal means to address his debts, and the creditors (such as the creditor in SOR ¶ 1.c) could have refused to settle. The security clearance adjudication is also not intended to punish an applicant for previous shortcomings or mistakes. Applicant attests that he has learned from the situation and is managing his finances more wisely. Based on the record before me, I conclude that he has adequately mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge