



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



In the matter of:)	
)	
)	ISCR Case No. 19-03481
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes approximately \$29,533 in past-due debts. While his financial problems started because of a substantial reduction in his income, he has made minimal progress addressing his past-due debts. Clearance eligibility is denied.

Statement of the Case

On February 6, 2020, 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 December 18, 2020, 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. On February 19, 2021, the Government submitted a File of Relevant Material (FORM) consisting of five Items, which included the SOR as Item 1 and his SOR response as Item 2. DOHA forwarded a copy of the FORM to Applicant on January 28, 2021, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on February 2, 2021. No response was received by the March 4, 2021 deadline.

On May 4, 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 7, 2021.

Evidentiary Rulings

Department Counsel submitted as Item 4 in the FORM a summary report of a personal subject interview (PSI) of Applicant conducted on April 19, 2019, 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 4:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) (Item 4) 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] PSI summary accurately reflects the information you provided to the authorized OPM investigator 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 interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant 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 PSI 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. Accordingly, I find that Applicant waived any objections to the PSI summary. Item 4 is accepted into the record as an exhibit, subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges that, as of February 6, 2020, Applicant owed two debts in collection for \$13,846 (SOR ¶ 1.a) and \$5,089 (SOR ¶ 1.b); a charged-off debt of \$9,431 (SOR ¶ 1.c); and a \$13,247 debt that was past due 90 days or more in the amount of \$1,167 (SOR ¶ 1.d). (Item 1.) When he responded to the SOR allegations, Applicant admitted the debts, but explained that he was paying on them monthly until his now ex-wife told him that she had drained their bank account, and that they were several months behind on the rent for their lot. Circumstances involving his then wife (a gambling problem and a drunk-driving offense) and other family members (a father with dementia) led Applicant to relocate where he landed a job making half of his previous income. He asserted that he was told to ignore the debts in the SOR by an online debt consolidation company. He claimed without any corroborating documentation that he paid off some other debts. (Item 2.)

Applicant's admissions to owing the delinquent debts alleged in the SOR are accepted and incorporated in the record as factual findings. After considering the FORM, consisting of the pleadings (Items 1 and 2) and Government exhibits (Items 3-5), I make the following additional findings of fact.

Applicant is a 54-year-old high school graduate employed as a truck driver by a defense contractor since December 2018. Twice married and divorced, he has a 28-year-old son and a 26-year-old daughter from his first marriage, which ended in July 2012 after 23 years. (Item 3.)

Applicant worked as a material handler for a large pharmaceutical manufacturer from April 2009 to March 2018. He and his first wife began having marital difficulties, and in June 2010 he left the family home and moved in with his second wife, whom he married in March 2013. (Item 3.)

While Applicant was working on third shift, his second wife apparently developed a gambling problem, drained their bank account, and fell several months behind in paying the rent for their lot. With funds borrowed from his sister, Applicant brought his accounts current only for his second wife to again deplete their checking account due to her gambling. In March 2018, Applicant resigned from his longtime job with the pharmaceutical company to prepare for a planned relocation to care for his father, who had been diagnosed with dementia. Applicant supported himself on his savings for a few months. In May 2018, Applicant relocated to his current area and moved in with his parents. He was unemployed until June 2018, when he began working as a material handler at half of his previous income. (Items 2-3.) He struggled to pay his bills because of the drastic reduction in his income after he moved to assist his parents, and he fell behind on some accounts. (Items 3-5.)

After Applicant relocated to his parents' home, he and his then wife were separated until December 2018, when she joined him in their new locale. While living separately from Applicant for five months, she continued to gamble. Applicant assumed the move would be good for her because there were no casinos nearby. (Item 2.) In December 2018, Applicant started working for his current employer, but his wife began gambling on cruise ships. It led to marital discord and divorce, which was final in November 2019. (Item 2.)

On April 4, 2019, Applicant completed a Questionnaire for National Security Positions (SF 86). In response to financial record inquiries concerning delinquency involving routine accounts, Applicant listed three delinquent debts, reportedly credit-card debts, for \$13,248, \$5,089, and \$9,432, and explained that, after moving to help care for his father, he earned less than half his previous income, and so he had difficulty paying his bills. He reported that he was currently utilizing the services of "an organization online that had an A+ rating with the Better Business Bureau" to help get his debt balances to zero. He added with respect to the three delinquent accounts listed on his SF 86 that he was following the directions of the credit-counseling organization. (Item 3.)

As of April 18, 2019, Applicant's credit report showed about the three listed delinquencies that the \$13,247 debt was the balance of an unsecured, signature loan (rather than a credit card) obtained in July 2016 for \$20,000 with a credit union. It was reportedly past due 90 days for \$1,167 (SOR ¶ 1.d). The credit-card account with a collection balance of \$5,089 (SOR ¶ 1.b) was opened in February 1999 and rated current until September 2018. The credit-card account with a charged-off balance of \$9,431 (SOR ¶ 1.c) was opened in May 2011 and charged off in March 2019 after seven months of no payments. Additionally, his credit report reflected a previously undisclosed delinquency with a credit union. A credit-card account (SOR ¶ 1.a) opened in January 2013 was current until September 2018. It was placed for collection in February 2019 and was past due for \$13,846 as of March 2019. His credit report reflected that he was making timely payments of \$544 per month on a loan for a motorcycle obtained in September 2018 for \$30,908. The loan balance was \$26,342 as of March 2019. Applicant owed no other outstanding debt. He had paid off a \$29,923 vehicle loan in May 2018. He was listed as an authorized user on a credit-card account opened in November 2003. The account was current with a \$227 balance. (Item 5.)

On April 19, 2019, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about the delinquent debts on his credit record. He admitted the debts, but explained that he had made timely payments before he moved. The accounts became delinquent due to his lower income after his relocation. He asserted that he had made a recent payment in January or February 2019 on his signature loan with a credit union, which he initially correctly identified as the account having a \$13,247 balance, although he later confused that account with his \$13,846 credit-card debt with the same credit union (SOR ¶ 1.a). (Item 4.)

Concerning efforts to resolve his debts, Applicant stated without any corroborating evidence that he made payments when he could. Applicant indicated that he contacted an online debt consolidation company to resolve his delinquent debts in lieu of resorting to bankruptcy and that he was paying the company "\$394 or \$364 each month" for approximately the past eight to ten months. He added that he was struggling to make his \$400 monthly payment on the signature loan each month and that he planned to contact the credit union about possibly lowering his monthly payment. Applicant stated he had not received any financial counseling. He was given the opportunity to provide documentation about his financial delinquencies and his debt consolidation plan. The OPM investigator received no documentation from Applicant in that regard. (Item 4.)

In response to the SOR, Applicant admitted the four alleged delinquencies. He explained that his second wife had gambled away the money in their checking account; that she had been jailed and served probation for a second drunk-driving offense before they moved; that when he relocated, his income was less than half of his prior income; that while he paid off some bills, the debt consolidation company with whom he was working told him "to let go" of the accounts listed in the SOR; and that after his wife joined him in December 2018, she gambled at a casino cruise ship. He related that divorce papers were filed by August 2018, and his divorce was final in November 2018. (Item 2.) Applicant did

not list on his April 2019 SF 86 that he and his now ex-wife were separated or divorced. (Item 3.) In all likelihood, he was divorced in November 2019.

Applicant did not provide any specifics about his current income or monthly expenses. His latest address of record is different from the address listed on his SF 86, where he was residing with his parents and apparently contributing to the expenses of his parents' residence. (Item 4.) It is unclear when he moved and whether he pays rent or a mortgage at his current address.

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.

Applicant’s April 2019 credit report (Item 5) shows that he stopped paying on the accounts in SOR ¶¶ 1.a-1.c in September 2018, while his signature loan account (SOR ¶ 1.d) was 90 days past due as of February 2019. As of April 2019, his unpaid delinquencies totaled \$29,533. His past-due debts establish the security concerns set forth in AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” The evidence is conflicting with respect to the applicability of AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so.” In lieu of filing for bankruptcy, Applicant had sought the assistance of a debt consolidation company through which he planned to pay his debts. During his April 19, 2019 interview, Applicant stated that he had been paying the debt consolidation company “\$394 or \$364 per month” for the past eight to ten months. His efforts to obtain the assistance of a debt consolidation company show a willingness to pay his debts. However, the lack of any documented progress toward resolving the debts in

the SOR, when coupled with his December 2020 explanation for “the ones in this paperwork” (presumably the SOR debts) that “[he] was told to let go” by the debt consolidation company, raises some doubts as to his present intention with regard to resolving the debts of concern to the DOD. AG ¶ 19(b) applies.

Application of the aforesaid disqualifying conditions 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 not so long ago and because the delinquencies are ongoing. The Appeal Board has repeatedly held that unresolved debts indicate a continuing course of conduct. See e.g., ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

Applicant has a case for some mitigation under AG ¶ 20(b) in that his recent financial struggles were caused by a significant loss of income after he moved to help care for his father in May 2018. He indicated that the best job he could obtain was at half of his previous income. Although it was Applicant’s decision to leave his longtime job and relocate, his father’s dementia, and, for that matter, his second wife’s gambling problem, were circumstances outside of his control.

For AG ¶ 20(b) to fully apply in mitigation, Applicant is required to have acted responsibly. In that regard, he is credited for having sought the assistance of a debt consolidation company before he completed his April 2019 SF 86 and was placed on notice that his delinquencies could present a security concern. However, that mitigating evidence is undermined by the lack of any documented progress toward resolving any of the SOR debts in the last two years. He stated during his OPM interview that he had made

a payment toward the signature loan in January or February 2019. He provided no corroboration for that claimed payment. He is expected to present documentary evidence supporting claims of debt payments, settlement, or other resolution. In the Government's FORM, Applicant was alerted to the importance of written documentation showing some good-faith efforts to address the security concerns raised by his outstanding delinquencies. There is no indication that Applicant submitted any documentation by the March 4, 2021 deadline for his response. A component of responsible financial management is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep debts current. He represented that he paid the debt consolidation company to take such actions on his behalf. Even so, the record is largely silent on what the debt consolidation firm accomplished with respect to the SOR debts, if anything. If the company advised him to let the debts go, as he now avers, he did not exercise sound financial judgment by relying on such financial advice knowing that the debts remain of concern to the DOD. Furthermore, neither AG ¶ 20(c) nor AG ¶ 20(d) are satisfied without evidence of some progress toward debt resolution or reasonable justification for why payments have not been made. The concerns about his financial judgment have not been adequately mitigated.

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). Applicant having requested a decision on the written record, it was incumbent on him to present sufficient mitigating information to enable a reasonable finding that his financial situation presents an acceptable security risk. Not enough is known about Applicant's current finances, including his income, expenses, and any savings. It is difficult to make an assessment as to whether he has the assets to resolve his financial delinquencies in the near future. Moreover, some doubt exists about his commitment to address the matters of

security concern. Applicant's April 2019 credit shows that he obtained a \$30,908 vehicle loan with a motorcycle manufacturer in September 2018. The evidence shows that when he took on that loan and its repayment obligation of \$544 per month, he stopped paying on the credit-card accounts in the SOR. It appears that he may have put his personal interest ahead of his obligation to his existing creditors.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). For the reasons discussed above, I have lingering concerns about Applicant's judgment, trustworthiness, and reliability.

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
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Subparagraphs 1.a-1.d:	Against Applicant
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Conclusion

In light of all of the circumstances, 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.

Elizabeth M. Matchinski
Administrative Judge