



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



In the matter of:)
)
) ISCR Case No. 20-02947
)
Applicant for Security Clearance)

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2021

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On November 24, 2020, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F (Financial Considerations). The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on May 7, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 11, 2021, scheduling the hearing for July 13, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted. Applicant testified on his own behalf. He submitted six documents at the hearing, Applicant Exhibits (AE) A-F, which I marked, and accepted into the record without objection. At Applicant's request, I kept the

record open until August 13, 2021. Applicant became ill and requested a continuance to September 10, 2021 to submit post-hearing submissions, which I allowed. He submitted 16 pages of documents, which I marked as AE G, and accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on July 22, 2021. The record closed on September 10, 2021.

Findings of Fact

Applicant, age 55, is married and has a child from a previous relationship and a stepson with his wife. (Tr. 18) He obtained his high school diploma in June 1984. He completed his undergraduate degree in 2003. (Tr. 22) He has taken courses for his master's degree, but not since 2007. (Tr. 53) Applicant served in the U.S. Air Force (active duty) for ten years from June 1990 until April 2000, and received an honorable discharge. He also served in the Air Force Reserves from April 2000 until 2007. Applicant completed his security clearance application on October 24, 2018. He has held a security clearance since 1997. (GE 1) Applicant has worked for his current employer for about one month as a systems engineer. (Tr. 21) Before moving from state A where he earned about \$132,000, to state B, he was able to support himself and his daughter. (Tr. 27, AE B)

The SOR (1.a-k) alleges that Applicant has delinquent debt in the approximate amount of \$25,637. The debts include consumer loans and collection accounts. Applicant admitted the majority of the allegations. He denied two allegations (1.a and 1.k) because he believed the accounts were resolved or are in dispute. Applicant noted that he used poor judgment. He wishes that he had contacted his creditors earlier. (Tr. 33)

Applicant acknowledged his financial hardship over the past years due to a move from one state to another for a 2017 job offer that did not materialize; other unemployment from July 2017 to January 2018, and unemployment from November 2020 to June of 2021. (Tr. 56) He identified single parenthood; custody battles and his wife's legal fees; underemployment for an hourly wage and child support as contributing factors for his financial problems. (Tr. 32, 34, AE D) He acknowledged that he had not started payments on the SOR debts because he borrowed money from friends and family, and wanted to pay them first. (GE 2) He borrowed about \$10,000 from a number of close friends and family and has repaid some of the loans. (Tr. 32, 87, Answer to SOR; and AE G) He believed he was making the right decision by paying his friends and family before he paid the debts on the SOR. (Tr. 24) Applicant also paid child support and money for arrears. (Tr. 42) He is current with his child support payments. (Tr. 49)

During Applicant's investigative interview from January to May 2019, he stated that unemployment benefits that he received were his means of financial support. (GE 2) Now that he has a full-time position making about \$140,000, he has arranged payment plans and wants to repay all debts within a two-year period. (Tr. 21) However, he has only had this position for a little over a month. Before the current position, he accepted a position in January 2018 that earned him \$22.74 an hour. From September 2018 until November 2020, he earned \$119,000. (Tr. 34, 56) He submitted a pay slip from an employment commission from July 2019 to June 30, 2020. Applicant received COVID stimulus checks for \$358 a week. (Tr. 43)

As to SOR 1.a, a collection account in the amount of \$613, Applicant denied that he owes money to this rental company. He cleaned the apartment in 2017, and the rental company refused to do a walk through. He did not file a written dispute with one of the credit reporting companies, as this rental company had a history of charging a departure fee based on the condition of the unit. At the hearing, Applicant stated that he settled the account for \$307, approximately half the amount billed by the creditor. (Tr. 60) He provided documentation, which was dated June 2021. (AE F) The disputes were all in the nature of verbal conversations. (Tr. 64)

As to SOR 1.b, Applicant admitted that he owed the charged-off account for a credit card in the amount of \$1,648. The last activity on the account was in 2017. (Tr. 65) Applicant entered into a payment arrangement in May 2020. (AE F) He claimed that he has made payments for three months, but provided no receipts. He put \$100 down, and will make monthly payments of \$25. (AE G) He hopes to increase the monthly amounts. He submitted a post-hearing submission that showed the balance on the account is now \$1,548. (Tr. 67)

As to SOR 1.c, a charged-off account in the amount of \$7,303, for a consolidation loan, Applicant admits the account is in default due to unemployment and personal loan repayments. He was due a federal tax refund, but \$7,303 was taken by the IRS to pay this account. (Tr. 47, 69; AE E) He submitted a cancellation of debt – Form 1099-C, dated December 15, 2020, to show that the debt has been discharged from part of his IRS refund.

As to SOR 1.d, a collection account in the amount of \$1,243, Applicant admits that he owes the debt and the account is in default due to unemployment. The first delinquency occurred in 2017. Applicant entered into a payment agreement in 2021. (AE F) He submitted a post-hearing submission (AE G) that showed the balance, as of June 5, 2021 was \$1,217.63. The plan arrangement will end in June 2025, if Applicant pays \$25 a month.

As to SOR 1.e, a collection account in the amount of \$5,776, Applicant admitted that he owes this amount and it is in default due to unemployment. He set up a payment plan in May 2021. (Tr. 75) He submitted, after the hearing, a copy of the same plan arrangement that he produced at the hearing and the document showed the plan called for an electronic payment of \$125 starting in June 2021. The balance on the document was \$5,651.35. (AE G) The plan would end in March 2025. There is nothing else to support Applicant's claim that he has made any more payments.

As to SOR 1.f, a collection credit account in the amount of \$1,341.00. Applicant made a payment agreement on May 13, 2021. He submitted a document after the hearing that showed a balance of \$1,316, with the attached payment plan. He is required to make monthly payments of \$25. The plan ends in 2025. (AE G) Another document was attached that was dated June 2021, which had a balance of \$1,291. (AE F) He did not submit anything that showed he made actual payments. (Tr. 76)

As to SOR 1.g, a collection account in the amount of \$1,042.00. Applicant admitted the debt. In May 2021, he made a payment agreement. He made a payment of \$25 but has not done anything else to resolve the debt since the agreement. (Tr. 77, AE G)

As to SOR 1.h, a collection account in the amount of \$2,175, Applicant admitted the debt which was a credit card. The account became delinquent in 2017 and in May 2021, Applicant entered into a payment arrangement to pay \$25 a month. He submitted a document after the hearing that showed a balance of \$2,125. (AE G, Tr.78)

As to SOR 1.i, a collection account in the amount of \$2,282, Applicant admitted he defaulted on the account in 2017, and until he made a payment arrangement in 2021, he did not take any action to resolve the debt. (Tr. 79, AE F) He submitted a document that shows a balance of \$2,256 as of May 26, 2021. (AE G)

As to SOR 1.j, a collection account in the amount of \$1,036, Applicant admitted he defaulted but did not know that the account was now \$3,000. In 2021, he arranged a payment arrangement to pay \$100 each month until the balance is paid in full. Applicant provided evidence that he made one payment of \$100. (AE F) His plan is set to end in 2024.

As to SOR 1.k, a collection account in the amount of \$1,178, Applicant denied that he owed this account. He stated that the account was paid and that he owed at the time \$800. He believes it was paid in 2018 or 2019 and deducted from his bank account. (Tr. 81) He did not provide any documentation to confirm his assertion except that it is not on his credit report. (Tr. 81)

Applicant submitted a letter of reference from someone who has known him for 18 years. This reference attests to the fact that Applicant is a devoted friend and a great member of the community. He has a positive attitude, good character and integrity. Applicant sets a standard for excellence. (Letter in file)

Applicant has not sought financial counseling, nor did he present a budget. He stated that his wife also works. He has no car loan. He has little money in a savings or checking account.

Applicant's post-hearing submissions were basically the payment plans that he has entered into for the various accounts. They are duplicates of what he presented at the hearing. Some documents showed a lesser amount owed than was alleged in the SOR, however, there were no electronic copies of the debits that he actually made as a payment. It is not possible to know how many payments, if any were made to the various creditors.

Policies

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 (AG) list

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are long-standing and he acknowledges that he used poor judgment and did not address the delinquent accounts until recently. He borrowed money from friends and family, and decided to repay them before the delinquent debts. After the issuance of the SOR, Applicant began to contact some of the creditors and or dispute the accounts. Admittedly, he had made a few small payments before the SOR, but the

payments were not consistent. He has been gainfully employed since June 2021. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved except for a few initial payments recently. He promises to address the accounts and to continue to pay them in the future. He has set up payment plans and settled one account. One account was cancelled because the IRS took part of his tax refund to pay the creditor.

AG ¶ 20(b) is partially established. Applicant presented credible explanations for the delinquent debts and that circumstances beyond his control caused the delinquent debts, but he did not act responsibly to address the resulting debts by borrowing \$10,000 from his friends and paying them before the creditors. It is clear that the unemployment periods, custody battle, and loss of an expected job in 2017 are evidence of some mitigation, but he did not address any payment plans until 2021.

AG ¶¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling; nor are there clear indications that his financial situation is under control. Only recently did he begin to address the debts when he realized that his security clearance and employment were in jeopardy. He did not present sufficient evidence to meet his burden of proof. He does not have a sufficient or meaningful track record to address his good judgment and reliability. Any doubts must be resolved in favor of the Government.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.k against Applicant, except for SOR ¶ 1.c.

Whole-Person Concept

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 applicable guidelines, 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, including his service in the military, his unemployment and openness at the hearing, I conclude that Applicant has not mitigated the security concerns raised

by his financial indebtedness. Applicant failed to submit evidence that any payments or continuous payments have been made that demonstrate an established history of good faith payments on the delinquent debts. His judgment is questioned when he decided to repay money borrowed from friends instead of addressing his creditors. 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

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.k:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge