



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



In the matter of:)
)
) ISCR Case No. 20-03548
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

October 22, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is denied.

Statement of the Case

On July 18, 2019, Applicant submitted a security clearance application (SCA). On May 28, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

On May 5, 2021, Applicant signed a receipt for the SOR, and on May 7, 2021, he responded to the SOR in writing (Answer) and attached six documents. These dates reflect that the date of the SOR is likely incorrect. Applicant requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On July 9, 2021, the case was assigned to me. DOHA issued a hearing notice on July 19, 2021 scheduling the hearing for August 9, 2021.

I convened the hearing as scheduled. Department Counsel presented Government Exhibits (GE) 1 through 7, which were admitted without objection. I marked the six documents attached to his Answer as Applicant Exhibits (AE) A through F. He also offered 17 additional exhibits, which I marked as AE G through W. His exhibits were admitted without objection. (Hearing Transcript at 16-26.)

I kept the record open until September 8, 2021, to give Applicant the opportunity to supplement the record. He timely submitted 23 additional documents, which I marked as AE X through TT and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on August 16, 2021. (Tr. at 73.)

Findings of Fact

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 60 years old and has worked for a DoD contractor as a software delivery manager since 1997. He has held a security clearance for about 15 years. He graduated from high school in 1979. He then received a certificate in technology from a trade school. He married in 1986, and has four adult children, ages 20 to 32. He has owned his home since 1999. (Tr. at 29, 38-41.)

Applicant and his wife incurred a significant amount of debt over a number of years. He and his wife had overspent on non-essential assets, which he purchased with borrowed money or credit cards. In May 2018, they realized they needed to be more fiscally responsible and actively manage their debts. They were able to pay their credit-card debts, but they could not reduce their balances by paying every month. He was using cash from the sale of investments to pay his credit cards. Also, Applicant's second oldest son and his youngest daughter lived at home. Then his oldest son and his wife and their children moved back into the family home. Applicant's family situation imposed significant new financial obligations on Applicant. (Tr. at 15-16, 18, 28-38; GE 2 at 2.)

In May 2018, Applicant hired a credit-counseling company to help him manage the debt. The advisor instructed Applicant to close all of his credit-card accounts and to stop paying the accounts as the first step to negotiate settlements. The advisor, however, only resolved one debt in a six-month period, and Applicant stopped working with that company. In August 2018, he began working with a law firm (the Firm) to help him resolve

the debts listed in the SOR. He has also sold off non-essential assets to reduce his debts. (Tr. at 15-16, 18, 28-38, 62-63; GE 2 at 2; AE C; AE D; AE E.)

Applicant testified that as of the time of the hearing, only three of the seven SOR debts remained outstanding (1.a, 1.b, and 1.g). As noted below, six of the debts were unpaid at that time. He has the funds to pay these debts. He has a net monthly remainder of about \$1,500. He invests ten percent of his salary in his 401K plan, which has a value of more than \$525,000. He has about \$500,000 of equity in his home. (Tr. at 35, 83; AE R.)

SOR Allegations

Paragraph 1, Guideline F - The SOR sets forth seven allegations regarding Applicant's unpaid consumer debts. In his Answer, Applicant admitted each of the allegations. The details regarding each of the delinquent debts are as follows:

1.a Account charged off in the approximate amount of \$4,706 – On the advice of his first advisor, Applicant stopped paying this credit-card account in May 2018. After the hearing, Applicant entered into a settlement agreement under which he would pay \$1,883 in full settlement of this debt. He provided a copy of that agreement and proof of payment on September 7, 2021. **This debt is resolved.** (Tr. at 42-44; GE 3 at 5; GE 6 at 12; AE DD; AE EE.)

1.b Account charged off in the approximate amount of \$2,601 – On the advice of his first advisor, Applicant stopped paying this credit-card account in May 2018. After the hearing, Applicant entered into a settlement agreement under which he would pay \$825 in full settlement of this debt. He provided a copy of that agreement and proof of payment on September 7, 2021. **This debt is resolved.** (Tr. at 44-46; GE 3 at 5; GE 6 at 12; AE FF; AE EE.)

1.c Account charged off in the approximate amount of \$17,393 – The Government's most recent credit report reflects that this credit-card account was paid in January 2021, and the account was closed. Applicant provided several documents confirming that this debt was resolved in January 2021 prior to the issuance of the SOR. He resolved this debt without the assistance of either of his two advisors by paying the creditor's collection agency \$7,827. The final payment was on January 11, 2021. **This debt is resolved.** (Tr. at 24, 31, 46-52; GE 3 at 5; GE 6 at 11; AE F; AE Z; AE AA; AE BB; AE CC.)

1.d Account charged off in the approximate amount of \$29,889 – On the advice of his first advisor, Applicant stopped paying this credit-card account in May 2018. Applicant testified that he has also recently been advised by his lawyer at the Firm that this debt is no longer "collectible" due to being outside the applicable statute of limitations. He provided as an exhibit information suggesting this account was only collectible for a period of three years. As noted above, he was provided an opportunity to supplement the record after the hearing. This additional time gave him the opportunity to seek a resolution

of this debt and two others similarly situated if he decided that such steps would provide mitigation of the security concerns raised by these unpaid debts. In his post-hearing submission, Applicant commented that he had “no updates to report” on this debt and the debts alleged in 1.e and 1.f, below. **This debt is not resolved.** (Tr. at 52-57; GE 3 at 2-3; GE 6 at 11; AE I; AE X.)

1.e Account charged off in the approximate amount of \$22,530 – This unpaid credit-card debt with the same bank as the debt in 1.d, above, is in the same posture as 1.d. **This debt is not resolved.** (Tr. at 57; GE 3 at 3-4; GE 6 at 10; AE I; AE X.)

1.f Account charged off in the approximate amount of \$5,897 – This unpaid credit-card debt with a different bank than the debts in 1.d and 1.e, above, is in the same posture as 1.d. **This debt is not resolved.** (Tr. at 57; GE 3 at 7; GE 6 at 11; AE I; AE X.)

1.g Account charged off in the approximate amount of \$11,272 – The Government’s most recent credit report in the record reflects that this account has been placed with a collection agency and that Applicant disputes this account. He testified that he has recently asked the Firm to negotiate a settlement of this account. As of the hearing date, he had not made any payments on this debt. After the hearing, Applicant provided a letter from the Firm, dated September 7, 2021, stating that it has presented to the creditor’s collection agency Applicant’s allegation that the creditor may have committed a violation of the Fair Debt Collections Practices Act. The letter advised that the Firm is waiting for a response “on a resolution of the matter.” This letter seems inconsistent with Applicant’s testimony that he asked the Firm to negotiate a settlement. In a separate letter from the Firm, dated May 6, 2021, Applicant’s attorney advised that the Firm has been representing Applicant with respect to this debt and others listed in the SOR since September 2018. After three years of inactivity in resolving this debt, the Firm is only now seeking to dispute this debt under an unspecified legal theory. As of the close of the record, Applicant was waiting for the creditor to respond. He also wrote that he has made “efforts to pay off [the] debt since August 9th hearing.” **This debt is not resolved. It has also been disputed.** (Tr. at 58-60; GE 3 at 3, 4; GE 6 at 12; AE Y; Hearing Ex. V.)

In addition to the above debts, a credit- card issuer had obtained a judgment against Applicant and his wife in September 2019 in the amount of \$32,570. The creditor then put a lien on Applicant’s home. With the help of the Firm, he settled this debt and his wife’s delinquent credit card account with the same card issuer prior to his February 2020 background interview. In addition, he made monthly payments to settle another credit-card debt in the amount of \$4,880. He paid \$43,500 to settle these debts. None of these accounts are alleged in the SOR. (Tr. at 33, 60-62; GE 2 at 3; AE G; AE H; AE V; AE W.)

Applicant attached to his Answer a letter from the Firm, dated May 6, 2021, one day before the date of his Answer, addressed “To Whom It May Concern” advising that he is exercising his rights under the Equal Credit Opportunity Act, the Consumer Credit Protection Act, the Fair Credit Billing Act, and a regulation promulgated by the Federal Reserve Board. The letter advises the recipient of the letter to “take into consideration the above-enumerated facts while considering credit with your company.” Applicant

submitted a second copy of this letter with his post-hearing submission, but he failed to explain what relevance he believed the letter has to this security clearance proceeding. (AE B; AE X; AE TT.)

Applicant and his wife are now living within their means and are beginning to save even more for investment and retirement. He provided evidence of the sale of certain assets and the payment of collateralized loans to reduce his expenses. He also submitted Certificates of Title for five vehicles evidencing that he owns the vehicles without a lien or any debt. Other documents submitted by Applicant reflect that he has an “unvested” interest in his employer’s public stock with a value of over \$345,000 and vested shares worth about \$28,000. With his post-hearing submission, he provided a summary page in which he made the statement that he continues to receive credit counseling from the attorneys at the Firm and has not made any large purchases or incurred any new credit card debt. (Tr. at 16; AE J; AE N-S; AE X.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

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, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Adverse clearance determinations must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . . 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.

The Government’s credit reports listing seven delinquent debts establish the following conditions under AG ¶ 19 that could be disqualifying:

- (a): inability to satisfy debts; and

(c): a history of not meeting financial obligations.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Five of these mitigating conditions have possible applicability to the facts of 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 taken to resolve the issue.

AG ¶ 20(a) is not established. Applicant's debts are numerous and recent. Applicant incurred extensive credit-card debt during a period when he was earning a substantial income. On the advice of his attorney at the Firm, he deliberately took no actions to resolve the debts alleged in the SOR while he waited for the applicable statutes of limitations to run to avoid paying the debts. He has not taken any actions to resolve three of the debts alleged in the SOR. On a fourth debt, he waited three years before deciding just prior to his hearing that he wanted his attorneys to begin negotiations to resolve that debt while at the same time disputing it. Applicant's behavior casts doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is not established. Applicant's debts arose due to his overspending on his numerous credit cards, which was completely under his control.

AG ¶ 20(c) is only partially established. Applicant sought credit counseling to help resolve his credit-card debt. However, he did not address his debt in a responsible or timely manner. He has been successful in resolving three of the seven debts alleged in the SOR and certain other non-alleged debts. Two of those debts were resolved with

payments after the hearing. Applicant has four remaining credit-card debts that are unresolved. There are no clear indications that these substantial liabilities are being resolved or are under control.

AG ¶ 20(d) is only partially established. Applicant paid one of the SOR debts prior to the issuance of the SOR. He paid two of the remaining six debts after the hearing. The timing of this effort somewhat undercuts the mitigation value of the resolutions of these debts as being made in good faith. He has not otherwise entered into a good-faith effort to repay the four remaining debts listed in the SOR.

As explained to Applicant at the hearing, his reliance upon the expiration of the statute of limitations making certain debts legally unenforceable is not viewed as a good-faith effort to resolve those debts for purposes of a security clearance adjudication under the Directive. See ISCR Case No. 15-01208 at 2 (App. Bd. Aug. 26, 2016) (Reliance upon a statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigation value.) The DOHA Appeal Board has held this position for many years. See, e.g., ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) (Although an applicant legally may rely on the running of a statute of limitation to avoid paying debts, such reliance does not, by itself, constitute a good-faith effort to resolve debts within the meaning of the Directive.)

AG ¶ 20(e) is not established. Applicant has disputed one debt (1.g) on a vague assertion by his legal advisor that Applicant's legal rights under one or more Federal statutes or regulations may have been violated. While Applicant documented this assertion of his rights, he did not provide any documents establishing a reasonable basis of the dispute.

Applicant has twice submitted a letter from the Firm, in which his lawyer argued that Applicant's assertion of his legal rights as a debtor under Federal law should not be held against him in connection with an evaluation of his creditworthiness. Applicant's submission of this letter with his Answer and again after the hearing suggests that his attorney is also arguing that in connection with Applicant's security clearance eligibility, the Federal Government cannot consider Applicant's unpaid debts that he is disputing as unenforceable. Assuming *arguendo* that Applicant is relying on this argument with regard to his unpaid credit-card debts, his argument is misplaced. DoD is not assessing Applicant's creditworthiness, nor is it looking to extend credit to Applicant. In this proceeding, DoD is adjudicating Applicant's reliability, trustworthiness, and judgment under the Directive's adjudicative guidelines promulgated for the sole purpose of determining Applicant's national security eligibility for access to classified information.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a

security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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 applied the adjudicative factors in AG ¶ 2(d). Additional comments are warranted. Applicant is a mature, well-compensated manager of a major U.S. defense contractor. He exercised poor judgment through excessive spending using multiple credit cards. His poor judgment continued by his reliance on his counselor's advice to stop paying his credit cards when he could have continued to pay them and seek to negotiate settlements of all of his debts over time. Instead, he waited for time to elapse and render some of his debts unenforceable under applicable state statutes of limitations.

Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial considerations.

Formal Findings

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Subparagraphs 1.d through 1.g	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

John Bayard Glendon
Administrative Judge