



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03593
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/05/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not provide sufficient information about his efforts or inability to resolve three of six delinquent debts alleged in the statement of reasons (SOR) totaling \$21,663. He did not give a clear indication of when he planned to pay the three unresolved debts. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 4, 2019, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 2). On April 29, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Item 1)

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

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

Applicant provided an undated response to the SOR, and he requested a decision without a hearing. (Item 1) On October 22, 2020, Department Counsel provided a File of Relevant Material (FORM). Applicant received a copy of the FORM on an unspecified date, and on November 4, 2020, Applicant responded to the FORM. On November 20, 2020, Department Counsel indicated he had no objection to Applicant's response to the FORM. On December 1, 2020, the case was assigned to me.

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

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations. (Item 1) He did not provide any supporting documentation about the status of delinquent debts. He also provided extenuating and mitigating information. (*Id.*) Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 32 years old, and he has been employed as a technician since May 2016. (Item 2 at 15-20) He has been continuously employed since February 2016. (*Id.* at 15-21) He was unemployed from May 2015 to February 2016. (*Id.* at 21) He served in the Air Force from March 2009 to May 2015. (*Id.*) He left active duty as an E-5, and he received a medical separation and an honorable discharge. (*Id.* at 21, 23-24) In 2006, he received a high school diploma. (*Id.* at 14) In 2014, he married, and he does not have any children. (*Id.* at 26-27) There is no evidence of workplace misconduct, abuse of alcohol, use of illegal drugs, or criminal conduct. He did not provide copies of performance evaluations or character-reference statements.

Financial Considerations

The SOR alleges six delinquent debts totaling \$24,152 as follows:

SOR ¶ 1.a is a charged-off debt for \$15,933 owed to a credit union. Applicant borrowed \$20,000 from the creditor to purchase a motorcycle, and the account became delinquent when he was deployed. (Item 3 at 6) His February 4, 2019 SCA indicates the "financial issue began" in September 2010; he disagreed "with method of payment after loan was late"; and he was "saving to pay a lump sum to them to satisfy the debt." (Item 2 at 41)

SOR ¶ 1.b is a charged-off debt for \$4,351 owed to a bank. Applicant's February 4, 2019 SCA indicates the "financial issue began" in September 2007; the creditor wanted a lump sum payment; and he was "[s]aving money to pay lump sum." (Item 2 at 39-40)

SOR ¶ 1.c is a charged-off debt for \$1,379 owed to a bank. Applicant's February 4, 2019 SCA indicates the "financial issue began" in November 2007, and he was "[a]waiting to pay lump sum." (Item 2 at 40-41) He said he shared the account with his older sister. (Item 1, SOR response) "She used a credit repair company without [his] knowledge, and the first action this company took was to close this account without it being paid off. Again, the company wanted the full amount since the account was closed." (Item 1, SOR response)

SOR ¶ 1.d is a debt placed for collection for \$1,202. Applicant's February 4, 2019 SCA indicates the "financial issue began" in either August or November 2016; he moved and was not notified of the debt; and he was "[a]waiting to pay lump sum." (Item 2 at 42-43) On September 22, 2020, Applicant paid \$1,001 and resolved this debt. (FORM response)

SOR ¶ 1.e is a debt placed for collection for \$1,145. Applicant's February 4, 2019 SCA indicates the "financial issue began" in either August or November 2016; he moved and was not notified of the debt; and he was "[a]waiting to pay lump sum." (Item 2 at 42-43) On September 22, 2020, Applicant paid \$970 and resolved this debt. (FORM response)

SOR ¶ 1.f is a debt placed for collection for \$142. Applicant's February 4, 2019 SCA indicates the "financial issue began" in October 2015; he moved and was not notified of the debt; and he was "[a]waiting to pay lump sum." (Item 2 at 41-42) On September 22, 2020, Applicant paid \$122 and resolved this debt. (FORM response)

In his Office of Personnel Management personal subject interview on March 27, 2019, Applicant acknowledged his responsibility for the SOR debts. (Item 3) He disagreed with some of the charges his creditors claimed, and he emphasized that he intended to pay the debts as soon as he had saved sufficient funds to do so. (*Id.*)

In the FORM, Department Counsel noted the absence of corroborating or supporting documentation of resolution of the SOR debts. Aside from Applicant's uncorroborated statements and credit reports, at the time the FORM was issued, there was no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the SOR debts. The FORM informed Applicant that he had 30 days from the receipt of the FORM "**in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.** If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 2 (emphasis added))

Applicant responded with receipts showing payment of the debts in SOR ¶¶ 1.d, 1.e, and 1.f. He said that he paid a credit monitoring service and received some financial advice about how to improve his credit score, reduce his debt, make timely payments, and pay off collections. (FORM response). He received two Air Force Achievement Medals when he was on active duty and deployed. (*Id.*) He acknowledged making

financial decisions in the past that he regretted, and he is taking responsibility for his delinquent debts. (*Id.*) He said:

My wife and I purchased a home in February of 2019 and have never been late on a payment. We paid off my wife's vehicle this year as well. We live within our means and are working on paying off the last of my collections. I hope by showing proof that I have paid off half of the findings brought against me, [that my actions] will shine light [on] the fact that I am financially responsible. It is my sincerest hope that this is enough to convince the parties involved to renew my security clearance so I can continue to aid the United States Air Force [in its mission to] continue to defend this country. (*Id.*)

Applicant's most recent credit report is dated October 22, 2020. (Item 6) The only delinquent debt on his October 22, 2020 credit report is the account listed in SOR ¶ 1.b for \$4,351. (*Id.* at 6) He paid several other debts, and several accounts are current. (*Id.*) The credit report did not list the debts in SOR ¶¶ 1.a and 1.c.

Applicant did not present any evidence of his income, budget, or a timeline for resolving the debts in SOR ¶¶ 1.a, 1.b, and 1.c. He did not present any evidence of payments, written offers to settle, or other correspondence to or from the creditors in SOR ¶¶ 1.a, 1.b, and 1.c.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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

security concern insofar as it may result from criminal activity, including espionage.

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

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

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

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

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

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

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

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

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

The SOR alleges six delinquent debts totaling \$24,152. Circumstances beyond his control adversely affected his finances, including unemployment and failure of his sister to keep a joint account current. However, he did not show that he acted responsibly under the circumstances. "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide documentary evidence that he maintained contact with creditors and attempted to negotiate partial payments to keep debts in SOR ¶¶ 1.a, 1.b, and 1.c current.

Applicant is credited with mitigating SOR ¶¶ 1.d, 1.e, and 1.f. He paid these three debts. The debts in SOR ¶¶ 1.a, 1.b, and 1.c remain for resolution. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Several of Applicant's delinquent debts may have been either charged off or dropped from his credit report or both. "[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information or when the debt has been charged off.

In ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (internal citation omitted) (mitigating security concerns despite garnishment to pay debt because of other financial efforts), the Appeal Board explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [this mitigating condition] an applicant must present evidence showing either a good faith effort to repay overdue creditors or some other good faith action aimed at resolving the applicant's debts. The Directive does not define the term "good faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than show that he or she relied on a legally available option (such as bankruptcy [or the statute of limitations]) in order to claim the benefit of [these mitigating conditions].

Applicant did not provide a personal financial statement or budget. He did not prove that he was unable to address or make greater progress on his three unresolved SOR debts. He received some financial counseling; however, Applicant did not provide sufficient documentation relating to the SOR debts in ¶¶ 1.a, 1.b, and 1.c, such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve a debt; or (5) other evidence of progress or resolution.

Applicant said he planned to pay or resolve the debts in SOR ¶¶ 1.a, 1.b, and 1.c. He did not indicate how much money he was saving each month to resolve the three debts, or when he planned to make a new settlement offer on any of the debts. He did not provide sufficient documentation about why he was unable to make greater documented progress resolving the debts in SOR ¶¶ 1.a, 1.b, and 1.c. There is insufficient

assurance that his financial problems are being resolved. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Whole-Person Concept

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

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

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

Applicant is 32 years old, and he has been continuously employed as a technician since February 2016. He was unemployed from May 2015 to February 2016. He served in the Air Force from March 2009 to May 2015. He received two Air Force Achievement medals for service while he was deployed. He left active duty as an E-5, and he received a medical separation and an honorable discharge. There is no evidence of workplace misconduct, abuse of alcohol, use of illegal drugs, or criminal conduct. He did not provide copies of performance evaluations or character-reference statements.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. He paid the three SOR debts in SOR ¶¶ 1.d, 1.e, and 1.f. He paid several other non-SOR debts, and several accounts are current.

The evidence against grant of a security clearance is more substantial. Applicant did not provide documentation about why he was unable to make greater documented progress resolving the three delinquent SOR debts in SOR ¶¶ 1.a, 1.b, and 1.c, totaling \$21,663. He did not give a clear indication of when he planned to pay or make a significant attempt to pay the three unresolved debts. There is no documentary evidence of progress (payments or payment plans) on these three debts. His lack of responsible financial action raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)). This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

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

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

Conclusion

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

Mark Harvey
Administrative Judge