



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-00058
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
 For Applicant: *Pro se*
 01/04/2022

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 2, 2020. On July 16, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on July 21, 2021, and requested a decision on the written record in lieu of a hearing. On August 12, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 7. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation,

mitigation, or explanation to the Government's evidence. He received the FORM on August 31, 2021, and did not respond or object to the Government's evidence. The case was assigned to me on December 2, 2021.

Evidentiary Matters

Items 1 through 3 contain the pleadings in the case. Items 4 through 7 are admitted into evidence. Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 5 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 5 could be considered as evidence in his case. As noted above, Applicant neither responded to the FORM nor objected to Item 5.

Findings of Fact

Applicant, age 34, is married with two minor children. He earned his high school diploma in 2005. He has been employed as a plant room operator by a hotel since February 2020. This is his first application for a security clearance. Although it is not explicitly stated therein, the record suggests that the defense contractor sponsoring Applicant's SCA, and for whom he has not yet begun working, has extended an offer of employment contingent upon a favorable determination. (Item 4)

The SOR alleged 10 delinquent debts totaling \$27,182, and that Applicant deliberately failed to disclose any delinquent debts, including nine of the alleged SOR debts, on his SCA. In his SOR answer, Applicant admitted each of the SOR allegations without explanation. His credit reports, dated May 2020 and January 2021, also confirm the alleged debts. (Items 1, 3, 6, 7)

The debt alleged in SOR ¶ 1.a (\$5,257) was the amount charged by Applicant's former landlord in about December 2016, when Applicant terminated his apartment lease three to four months early. During the May 2020 security clearance interview (SCI) conducted in connection with his SCA background investigation, Applicant expressed an intent to pay this debt using funds from a financial account that he anticipated would mature in Fall 2020. This debt remains unresolved. (Item 5 at 3-4)

The debt alleged in SOR ¶ 1.b (\$1,870) is a credit-card account that was charged off by the creditor in April 2016. Applicant last made a payment to the creditor in September 2015. During his SCI, Applicant explained that he opened this account to purchase a washer and dryer. He expressed an intent to contact the creditor to resolve this debt. This debt remains unresolved. (Item 5 at 2; Item 6 at 7; Item 7 at 2)

The debt alleged in SOR ¶ 1.c (\$2,892) is a credit-card account that was charged off by the creditor in April 2016. Applicant last made a payment to the creditor in August

2015. Applicant opened this account to purchase food, gas, and basic necessities. This debt remains unresolved. (Item 5 at 3; Item 6 at 5; Item 7 at 3)

The debt alleged in SOR ¶ 1.d (\$2,098) is a credit-card account that was placed for collection by the creditor in about June 2016. The account first became delinquent in October 2015. Applicant opened this account to purchase food, tires, and tools. During his SCI, Applicant detailed an arrangement he negotiated with the creditor to make a \$1,250 lump-sum payment to resolve this debt. This debt remains unresolved. (Item 5 at 2-3; Item 6 at 6; Item 7 at 3)

The debt alleged in SOR ¶ 1.e (\$5,497) is an automobile-loan account that was charged off by the creditor in February 2016. Applicant opened this account in March 2014, and last made a payment to the creditor in October 2015. Applicant fell behind on this account because he obtained another vehicle. During his SCI, Applicant expressed an intent to contact the creditor to settle the debt. This debt remains unresolved. (Item 5 at 4; Item 6 at 6; Item 7 at 3)

The debt alleged in SOR ¶ 1.f (\$4,749) is another automobile-loan account that was charged off by the creditor in March 2016. Applicant opened this account in March 2014, and first became delinquent in September 2015. He last made a payment to the creditor in February 2016. Applicant fell behind on this account because he traded in this vehicle for a larger vehicle, which added to his loan balance. During his SCI, Applicant detailed an arrangement he made with the creditor to settle the debt for the reduced amount of \$2,098 a few months earlier, in February or March 2020. He asserted that he had not yet paid the debt as of his SCI because he was trying to save money for one lump-sum payment. This debt remains unresolved. (Item 5 at 3; Item 6 at 5; Item 7 at 3)

The debt alleged in SOR ¶ 1.g (\$1,242) is a credit-card account that was charged off by the creditor in April 2016. The account first became delinquent in October 2015. Applicant opened this account to purchase a television and other miscellaneous items. During his SCI, Applicant detailed an arrangement he made with the creditor the day before his SCI to settle the account in one lump-sum payment, and his plan to make that payment by the end of the week. This debt remains unresolved. (Item 5 at 2; Item 6 at 7; Item 7 at 4)

The debt alleged in SOR ¶ 1.h (\$3,025) is a debt consolidation loan on which Applicant defaulted in about 2016. During his SCI, Applicant attributed his default to the loan's high interest rate, and expressed an intent to contact the creditor to settle the debt. This debt remains unresolved. (Item 5 at 3; Item 6 at 6)

The debt alleged in SOR ¶ 1.i (\$442) is a utility account for Internet service that was placed for collection by the creditor in about May 2019. During his SCI, Applicant asserted that he disputed the debt on the basis that he had cancelled the service and returned the equipment. He claimed that he was billed for equipment and service that he did not receive. He did not proffer any documents corroborating his dispute. This debt remains unresolved. (Item 5 at 2; Item 6 at 8; Item 7 at 4)

The debt alleged in SOR ¶ 1.j (\$110) is a utility account for Internet service that was placed for collection by the creditor in about September 2018. The last reported date of activity on this account was September 2016. During his SCI, Applicant asserted that he disputed the debt on the basis that he had cancelled the service, returned the equipment, and thought that he had paid the account in full. He did not proffer any documents corroborating his dispute. He expressed an intent to contact the creditor to pay the debt despite his dispute. This debt remains unresolved. (Item 5 at 1; Item 6 at 8)

Applicant's 2020 credit report revealed a \$280 debt for a credit-card account that was charged off by the creditor in January 2017. Because this debt was not alleged in the SOR, I will consider it only to evaluate mitigation and the whole-person concept. Applicant opened this account to purchase a car battery. The account first became delinquent in August 2016. During his SCI, Applicant expressed an intent to contact the creditor to settle the debt. His 2021 credit report confirmed that Applicant resolved this debt in October 2020. (Item 5 at 1-4; Item 6 at 8; Item 7 at 2-3)

On his SCA, Applicant answered "no" to all questions about his financial record, including whether, in the last seven years, he: 1) had defaulted on any type of loan; 2) had debts turned over to a collection agency; or 3) had credit-card accounts charged off for failing to pay as agreed. He did not otherwise disclose any of the SOR debts on his SCA. (Item 4 at 37-38)

During his SCI, Applicant was asked if, in the last seven years, he had bills turned over to collections or had an account charged off for failure to pay. In response to that question, he volunteered information about the debt alleged in SOR ¶ 1.a and stated that no other accounts could be recalled. After being confronted with information about the debts alleged in SOR 1.b through 1.j, Applicant acknowledged and provided additional details concerning each debt. When asked why he did not list any debts on his SCA, he explained that, until he was confronted with them during the SCI: 1) he had forgotten about the debts alleged in SOR ¶¶ 1.b through 1.d, 1.g, and 1.h, and 2) he was not aware of the debts alleged in SOR ¶¶ 1.i and 1.j. Although he attempted to list the debt alleged in SOR ¶ 1.a on the SCA with information that he knew, because the information known was incomplete, the system would not accept incomplete account information. He did not list the debts alleged in SOR ¶¶ 1.e and 1.f on the SCA because he believed that they occurred outside of the seven-year reporting window. (Item 5)

Applicant was offered an opportunity to provide documentation for the financial accounts discussed during his SCI. He timely submitted those documents, including: 1) a February 2017 notice alerting Applicant that the account alleged in SOR ¶ 1.b had been placed for collection; 2) a February 2017 offer to settle the account alleged in SOR ¶ 1.g for a discounted payoff of \$870; 3) a March 2020 statement concerning the charged-off account alleged in SOR ¶ 1.d; 4) an April 2017 notice alerting Applicant that the account alleged in SOR ¶ 1.f had been placed for collection; and 5) a June 2020 confirmation of an agreement to settle the account alleged in SOR ¶ 1.j for the reduced amount of \$72. (Item 5 at 7-13)

Applicant attributed his financial issues primarily to underemployment and poor debt management. He also cited a relocation, new child, and new employment as contributing factors. Although he did not specify the underlying details, the SCA revealed that he relocated from state A to state B in December 2016; that his youngest child was born in September 2016; and that he was unemployed from December 2016 through February 2017 due to his relocation. (Item 4 at 14, 26; Item 5 at 4)

During his SCI, Applicant described his financial situation as making enough money to get by, while also stating that he was not making a lot of money. He maintained that he was very willing and able to repay his debts, but did not proffer any details or corroborating documents concerning his relevant income and expense history or his ability to repay his debts. He indicated that he had a savings account without specifying the amount therein. He did not anticipate any further financial difficulties because his wife had taken over the responsibility of managing their finances. He had not received any financial counseling. He travelled to Japan for eleven to twenty days between December 2019 and January 2020 to visit U.S. citizen friends who were stationed there. The record did not indicate any of the associated costs or how those costs were paid. Applicant's January 2021 credit report revealed no new delinquent debts or recently opened accounts. (Item 4 at 31-32; Item 5 at 4; Item 7)

After his relocation to state B, Applicant was employed as an appliance technician from February 2017 through February 2020. He left that position due to a lack of advancement opportunities. When he resided in state A, Applicant held various positions in the service industry including: 1) as a facilities technician at a fitness studio from April 2016 through December 2016 (he left due to his relocation); 2) as an appliance technician for an appliance services company from May 2015 through April 2016 (he left for a "Change of career"); 3) as a technician at an automobile dealership from January 2012 through May 2015 (he left for a "Change of career"); 4) as a customer service advisor at an automobile service and repair company from December 2011 through January 2012 (he left to pursue another opportunity); 5) as a bartender at a hotel from March 2011 through December 2011 (he left for a "Change of career"); and 6) as a barista at a coffee shop from September 2008 through March 2011 (he left to pursue another opportunity). (Item 4 at 14-19).

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." (*Egan* 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." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.

Clearance decisions 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." (EO 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. (*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. 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. (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; AG ¶ 2(b))

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

The record evidence establishes the following disqualifying condition under this guideline: AG ¶ 19(c) (a history of not meeting financial obligations). Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

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

AG ¶ 20(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.

Applicant failed to resolve any of the delinquent debts alleged in the SOR. He did not meet his burden to establish that his debts were largely attributable to circumstances beyond his control, or that he acted responsibly to resolve them in any event. I credit him with resolving the \$280 unalleged debt and the arrangements he made to resolve the debt alleged in SOR ¶ 1.j. However, without documentary proof, I am unable to conclude that he made payments pursuant to that arrangement or that he made arrangements or payments towards other debts as he claimed. Although he expressed potential bases to dispute the legitimacy of the debts alleged in SOR ¶¶ 1.i and 1.j, he did not provide

documentary proof to substantiate the bases of his disputes or evidence of actions he has taken to investigate or resolve the issues. Further, he failed to establish that his indebtedness is not likely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment. Applicant has not mitigated the Guideline F concerns. AG ¶¶ 20(a), (b), (d), and (e) are not established.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition under this guideline could apply:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Although Applicant wrote "I admit" in response to the Guideline E allegation (SOR ¶ 2.a) in his SOR Answer, I do not find that it was a knowing and willful admission that he "deliberately" falsified his SCA in light of the record as a whole. Thus, I find that the falsification allegation is controverted.

When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative

judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.

During his SCI, Applicant was forthcoming with details about his delinquent debts and provided reasonable explanations for his failure to report them on his SCA given his background and experience. Applicant's interpretation of the seven-year reporting period with respect to the debts alleged in SOR ¶¶ 1.e and 1.f, while incorrect, was reasonable under the circumstances. I do not find substantial evidence of an intent on the part of Applicant to omit, conceal, or falsify facts from his SCA. Therefore, AG ¶ 16(a) is not established. Accordingly, I find SOR ¶ 2.a in favor of Applicant.

Whole-Person Analysis

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 adjudicative 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 Guidelines F and E 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 E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concern raised by his SCA omissions. However, he has not mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge