



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



| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| REDACTED |) | ISCR Case No. 21-01287 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on six accounts on which he owed more than \$50,000 in total debt. He has settled one of the debts, a credit-card debt charged off for \$10,534, but more progress is needed toward resolving his other delinquencies. Clearance eligibility is denied.

Statement of the Case

On June 29, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant received the SOR on July 7, 2021. He submitted an undated response to the SOR allegations and requested a decision on the written record in lieu of a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On November 16, 2021, the Government submitted a File of Relevant Material (FORM) consisting of a statement of the Government's position and eight documents pre-marked as Item 1 through Item 7. The SOR and Applicant's SOR response were included as Item 1. On November 17, 2021, DOHA forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on November 26, 2021. The December 26, 2021 deadline for Applicant's response passed without any documents having been received from him in response to the FORM.

On February 2, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file and assignment on February 11, 2022.

Evidentiary Rulings

Department Counsel submitted as Item 7 in the FORM a summary report of a personal subject interview (PSI) of Applicant conducted on July 8, 2020, by an authorized investigator for the Office of Personnel Management (OPM). The summary report of the PSI was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant's attention was directed to the following notice regarding Item 7:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the [FORM], you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you may make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your

response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded her if he was represented by legal counsel. *Pro se* applicants are not expected to act like lawyers, but they are expected to take timely and reasonable steps to protect their rights under the Directive. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See also ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Applicant was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant did not submit a response to the FORM.

Government officials are entitled to a presumption of regularity in the discharge of their official responsibilities. See, e.g., ISCR Case No. 15-07539 (App. Bd. Oct. 18, 2018). Applicant can reasonably be held to have read the PSI summary in Item 7, and there is no evidence that he failed to understand his obligation to file any objections to the summary if he did not want the administrative judge to consider it. Accordingly, I find that Applicant waived any objections to the PSI summary. Items 1 through 7 are accepted as evidentiary exhibits subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges that, as of June 29, 2021, Applicant owed charged-off debts of \$14,237 (SOR ¶ 1.a), \$12,495 (SOR ¶ 1.b), \$4,415 (SOR ¶ 1.d), \$4,301 (SOR ¶ 1.e), and \$10,534 (SOR ¶ 1.f); and a collection debt of \$8,423 (SOR ¶ 1.c). When Applicant answered the SOR, he admitted five of the six alleged debts. He denied the debt in SOR ¶ 1.f on the basis that it has been paid. He provided a document from a collection entity showing that the debt had been settled on April 8, 2020, on receipt of a final resolution payment of \$4,740. He explained that he was working through a debt-resolution company to address his delinquent accounts. (Item 1.) After considering Items 1 through 7, I make the following findings of fact:

Applicant is 66 years old and unmarried. He has no children. He has worked in the field of physical security since at least January 1991. He began working for his current employer, a defense contractor, in March 2019. As of July 2020, he was a guard site supervisor for the U.S. Army. (Item 7.) Applicant indicated on a March 21, 2020 Questionnaire for National Security Positions (SF 86) that he had been granted a security clearance at the secret level, although he did not know the date. (Item 2.) In response to the SOR, Applicant stated that he has been a security clearance holder since the early 1980s. (Item 1.)

On his March 2020 SF 86, Applicant listed charged-off credit-card debts of \$14,237 (SOR ¶ 1.a), \$16,796 (two accounts SOR ¶¶ 1.b and 1.e), \$8,423 (SOR ¶ 1.c), and \$10,534 (SOR ¶ 1.f). With respect to each of the debts, Applicant stated, "I was ripe [sic] off for about 49000 dollars and I was not able to [pay my] credit card bills." He indicated that he hired a company "to take care of the problem," but he had not yet heard from his creditors. (Item 2.)

One or more of the credit reports in evidence from September 5, 2019 (Item 3), April 24, 2020 (Item 4), March 9, 2021 (Item 5), and November 9, 2021 (Item 6) showed that Applicant defaulted on the following accounts.

SOR ¶ 1.a — \$14,237

On May 11, 2016, Applicant opened a credit-card account with a \$19,500 credit limit. He made a last payment on the account in May 2017. In February 2018, a \$14,237 past-due balance was charged off. (Items 3-7.)

SOR ¶ 1.b — \$12,495

On April 2, 1998, Applicant opened a credit-card account with a \$12,500 credit limit. During his July 2020 PSI, Applicant explained that he had obtained the credit card for "business and consolidation reasons." He made a last payment on the account in May 2017. The account was seriously delinquent as of January 2018. By September 2019, the account had been charged off for \$12,495. (Items 3-7.)

SOR ¶ 1.c — \$8,423

On August 18, 2009, Applicant opened a credit-card account with a \$7,500 credit limit. Applicant made a last payment on the account in November 2017. The account was seriously delinquent as of July 2018. A \$7,292 balance was charged off. As of September 2019, the account was \$8,423 past due. (Items 3-7.)

SOR ¶ 1.d — \$4,415

Applicant obtained an unsecured personal loan on August 13, 2012, to pay some bills. He made no payments after May 2017, and a \$4,415 balance was charged off in October 2017. (Items 3-7.)

SOR ¶ 1.e — \$4,301

On March 19, 1998, Applicant opened a credit-card account with a \$3,850 credit limit. He made no payments after May 2017. A \$4,301 balance was charged off in July 2018. (Items 3-6.) As of April 2020, the debt was listed on his credit report as a charge-off and as a collection balance. (Item 4.)

SOR ¶ 1.f — \$10,534

On May 11, 2016, Applicant opened a credit-card account with a \$10,670 credit limit. The account was charged off for \$10,534 on December 19, 2017. (Items 2, 3.) On April 8, 2020, Applicant paid \$4,740, which was accepted in full settlement of the debt. (Item 1.)

When interviewed by an authorized investigator for the OPM on July 8, 2020, Applicant stated that he was contacted by an unknown person in 2016 and offered a business opportunity. In return for an initial investment of cash in an amount he could not recall, Applicant would receive a percentage from the company's sales. One month after his initial investment, Applicant received \$500, which was enough to persuade him that the business opportunity was legitimate. Applicant invested a total of \$16,000 on credit, even though he did not receive another payment for his investments. He then stated that he received an unsolicited offer from another company, claiming that it could "set up a false company for him" through which the business expenses could be written off to clear the debts. Applicant paid \$14,000 into that venture. He denied any susceptibility to future scams as he had become weary of business ventures and knows that offers that sound too good to be true probably are scams. Applicant stated that he had no paperwork or electronic correspondence about the dealings. He did not report the scams to the police. (Item 7.)

Applicant admitted that he owed the past-due debts alleged in SOR ¶¶ 1.a-1.e. He stopped paying on the accounts because the minimum monthly required payments became too high for him to pay them and also meet his living expenses. He paid a debt-resolution company \$360 a month for about a year from 2018 to 2019 to address the debts, but then began to suspect that he was being scammed. After learning from his creditors that no efforts had been made to negotiate with them, he stopped paying the debt-resolution firm. Aware of the charge offs, he had not contacted his creditors in over three years. He expressed that he did not plan to pay the defaulted balances, but if contacted, he would attempt to settle the debts for less than their full balances. (Item 7.)

Applicant told the OPM investigator that his base annual income is \$35,000, but with overtime he can earn up to \$60,000 a year. He estimated his monthly take-home income at \$2,288 from which he pays his monthly expenses totaling \$1,850. He did not maintain a savings account but had about \$17,482 in his checking account. (Item 7.)

As of March 9, 2021, Applicant's credit report showed that no progress had been made toward resolving the debts in SOR ¶¶ 1.a-1.e. Applicant was making timely payments of \$300 a month on his \$32,822 mortgage for his mobile home; \$215 a month on a car loan obtained in October 2019 for \$10,327; and \$50 a month on an installment loan obtained in September 2019 for \$2,846. Applicant had no open credit-card accounts. (Item 5.)

As of November 9, 2021, Equifax was showing no progress toward addressing the past-due balances in SOR ¶¶ 1.a-1.e totaling \$43,871. Applicant had continued to make timely payments on his mortgage, which had a balance of \$19,294. In September 2021, he paid off his car loan with his payment of \$4,135. In June 2021, he paid off an unsecured loan obtained in September 2019. He had no open credit-card accounts. (Item 6.)

In response to the June 29, 2021 SOR, Applicant admitted that he had financial difficulties largely because he "was taken advantage of by a debt relief agency." He explained that he was contacted by the debt-resolution company, which promised to handle everything with his creditors in return for monthly payments of \$360. After he had made several months of payments, he learned that his creditors had not been contacted. He asserts that shortly after he stopped paying the first debt-resolution firm, he contacted another debt-relief company, who instructed him to cancel his credit cards and stop paying them. Applicant authorized the debt-relief company to handle his defaulted accounts. He provided proof that the debt in SOR ¶ 1.f had been settled, and stated that he was still working with the debt-relief firm to settle his remaining delinquent debts. As evidence of his financial responsibility, Applicant cited the recent pay off of his vehicle loan "well in advance of the loan terms." Additionally, he was making his monthly mortgage and utility payments on time and in full. (Item 1.)

Applicant presented no details about his monthly payments to the second debt-relief firm and no evidence showing progress toward resolving the debts in SOR ¶¶ 1.a-1.e, even though he had an opportunity to update the evidentiary record in response to the FORM.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative

judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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

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

Guideline F security concerns are established when an individual fails to pay financial obligations according to terms. Applicant defaulted on the six accounts listed in the SOR, although he settled the debt in SOR ¶ 1.f for less than its full balance in April 2020, well before the SOR was issued. While that debt is no longer a source of financial pressure for Applicant, the federal government is still entitled to consider the facts and circumstances surrounding his conduct in incurring and failing to satisfy the debt in a timely manner. See, e.g., ISCR Case No. 14-03991 at 2 (App. Bd. Jul. 1, 2015). The Appeal Board has held that the administrative judge is not precluded from considering whether the circumstances underlying a debt impugn an applicant's judgment or reliability. See, e.g., ADP Case No. 14-022-6 at 3 (App. Bd. Oct. 15, 2015). An applicant's financial history and circumstances are relevant in assessing his or her self-control, judgment, and other qualities essential to protecting the national interest as well as the vulnerabilities inherent in the circumstances. Applicant has yet to satisfy the majority of his delinquent debts, which total \$43,871. Disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations," apply.

The Government had a legitimate case for application of AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," as of July 2020. Applicant expressed during his PSI that he had no plan to pay his charged-off debts, although he would attempt to negotiate settlements if contacted by his creditors. His settlement of the debt in SOR ¶ 1.f shows some willingness to pay his legitimate obligations, albeit on terms that appear to be favorable to him.

Applicant has the burdens of production and persuasion in establishing sufficient mitigation to overcome the financial concerns raised by his loan and credit-card defaults. One or more of the following conditions under AG ¶ 20 may apply in whole or in part:

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

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

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

AG ¶ 20(a) cannot reasonably apply in mitigation. Applicant has resolved only one (SOR ¶ 1.f) of his established delinquent debts. An applicant's ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. *See, e.g.*, ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

Regarding AG ¶ 20(b), Applicant maintains that his financial issues were caused, in large part, by the fact that he was taken advantage of by a debt-relief agency. A contractual violation by the debt-relief company would be mitigating of his lack of progress toward resolving his debts from 2018 to 2019, when he was paying the company \$360 a month to deal with his creditors for him. It would not trigger AG ¶ 20(b) with respect to his initial defaults. Applicant took on a substantial amount of credit card debt in 2016 in what he described as a "business investment." For his initial outlay of an unrecalled amount, he received \$500, which apparently was enough to persuade him that it was a legitimate business opportunity. He paid about \$16,000 to the company, using his personal credit cards, despite seeing no additional return from his investments. His debts largely resulted from his questionable financial judgment and not because of a circumstance beyond his control. The security concerns in that regard are further compounded if, as he stated, he paid a second, unsolicited company \$14,000, to "set up a false company for him" through which the business expenses could be written off to clear the debt. AG ¶ 20(b) has minimal applicability in this case.

AG ¶¶ 20(c) and 20(d) are established only with respect to the debt in SOR ¶ 1.f, which was settled for less than its full balance in April 2020. While Applicant explained in the summer of 2021 that he is working through another debt-relief company to address his remaining delinquencies, his credit report of November 2021 showed no progress on those accounts. An applicant is not required to establish that he or she has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. *See* ISCR Case No. 07-06482 (App. Bd. May 21, 2008). However, "an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." *See, e.g.*, ADP Case No. 17-00263 at 4. Applicant provided no documentation of his agreement with the debt-relief firm or of any efforts the company may have made on his behalf. As recently as his PSI in July 2020, Applicant had about \$17,482 in his checking account and no plan to pay his charged-off balances. The financial considerations security concerns are not adequately mitigated.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

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

The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-92160 at 5 (App. Bd. June 21, 2010). Applicant is credited with paying his living expenses, including his mortgage, vehicle loan, and utilities on time. His November 2021 credit report shows that he made a lump-sum payment of \$4,135 in September 2021 to pay off his vehicle loan ahead of time. Assuming that he has a credible plan in place with the debt-relief firm to settle his outstanding delinquencies, he showed a vulnerability to investment scams that raises serious doubts about whether he can be counted on to exercise the judgment, reliability, and trustworthiness that must be expected from those persons granted access to classified information. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant.

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.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge