



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



In the matter of:)	
)	
)	ISCR Case No. 20-01262
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to present sufficient evidence to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 12, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on November 2, 2021. The hearing was convened on February 11, 2022. Government Exhibits (GE) 1 through 8 were admitted into the record without objection. GE 8, the Government’s Discovery Letter, was marked and made part of the record, but it is not substantive evidence.

Applicant submitted with his answer to the SOR six documents that I marked as Applicant Exhibits A through F. On February 10, 2022, he emailed me five documents that I marked as AE G through L, and made part of the record. Applicant testified, as reflected in the transcript received on February 17, 2022. Post-hearing, on February 24,

2022, he emailed me AE M through U, which I made part of the record. All exhibits were admitted without objection.

Findings of Fact

Applicant is 51 years old. He graduated from high school in 1988. He attended college between 2000 and 2003, and again between 2006 and 2019, but did not receive a degree. Applicant has never been married, and he has no children.

Applicant work history shows four periods of unemployment, the result of being in between contracts. He was unemployed between February and August 2009; between August and November 2010; between April and May 2011; and he was laid off in July 2017 and unemployed until September 2017. He stated he worked part-time at a gym or “other gigs” while waiting for another contract. Except for the above periods of unemployment, Applicant has been working for federal contractors since November 2009. He was hired by his current employer and security sponsor, a federal contractor, in April 2019. He is an Information Technology (IT) systems administrator. (Tr. 23) He is earning about \$93,000 a year. (Tr. 29)

Applicant submitted his most recent security clearance application (SCA) on April 9, 2019, seeking the continuation of his clearance eligibility required for his job. He stated that other federal agencies granted him clearances in 2007 and 2009, and that the Office of Personnel Management granted him eligibility for a secret clearance in 2009. (GE 1)

In his answers to Section 26 (Financial Record) of his 2019 SCA, Applicant disclosed he was delinquent in four accounts including the car loan alleged in SOR ¶ 1.a (surrendered in 2015, and owing \$25,733); the credit card account alleged in SOR ¶ 1.c (delinquent in 2015, and owing \$1,152); the delinquent rent alleged in SOR ¶ 1.g (owing \$5,822 since 2015); and the medical account alleged in SOR ¶ 1.b (delinquent in 2016, and owing \$6,425).

Applicant explained that his financial problems were the result of periods of unemployment and underemployment. He works for federal contractors, and he is subject to layoffs when the contracts end or his employers fail to renew the contract. He claimed he had been in contact with his creditors trying to establish payment agreements or to settle the accounts. He failed to present documentary evidence to substantiate his claim.

The SOR alleges nine delinquent debts, totaling about \$41,000, which include two charged-off consumer credit accounts (SOR ¶¶ 1.a and 1.d); and seven collection accounts (SOR ¶¶ 1.b, 1.c, and 1.e through 1.i). The remaining SOR allegation, SOR ¶ 1.j, alleged that Applicant filed for Chapter 7 bankruptcy in December 2008, which was discharged in April 2009. (Tr. 40) Applicant admitted all of the SOR allegations with clarifications.

The status of the SOR allegations follows:

SOR ¶ 1.a (\$25,733) concerns a car purchased in 2012. Applicant was unable to make the car payments after he was laid off. He claimed he maintained contact with the creditor and made some payments with the help of his mother after he was laid off. Ultimately, he surrendered the car to the creditor in 2015. Applicant received a Cancellation of Debt, Form 1099-C, for \$23,712, dated December 31, 2021. (AE O) He intends to file the document with his 2022 income tax return. (The 1099 is from 2021 so it has to be the 2021 tax return.) He failed to present documentary evidence to substantiate his claim of contacts with the creditor.

SOR ¶ 1.b (\$6,425) alleges a medical account in collection. After he was laid off in 2015, Applicant travelled to another state and was hospitalized and treated for kidney stones in 2016. Applicant never made any payments toward this debt. In May 2021, he contacted the creditor and was offered a \$4,500 lump-sum settlement. He intends to take out a loan to pay off the debt. (Tr. 48-50) This debt is unresolved.

SOR ¶ 1.c (\$1,152) alleges a delinquent credit card in collection. The creditor obtained a \$1,152 civil judgment against Applicant in September 2017. (GE 7) Applicant claimed he contacted the creditor on an unknown date before he received the February 2021 SOR, and then again on April 19, 2021, and was offered a \$1,000 lump sum settlement. He satisfied the judgment on June 24, 2021. (AE R) He failed to present documentary evidence to substantiate his claim of contacts with the creditor before April 2021.

SOR ¶ 1.d (\$683) alleges a delinquent credit card in collection. Applicant opened the account in 2013-2014 and it became delinquent when he lost his job around 2015. He claimed he sporadically contacted his creditors telephonically trying to settle his delinquent accounts. He claimed he contacted the creditor before he received the SOR and made a settlement offer. The creditor agreed to settle the account for \$480. Applicant settled the account for less than owed and paid \$480 on April 1, 2021. (AE B, AE T) He failed to present documentary evidence to substantiate his claim of contacts with the creditor before April 2021.

SOR ¶ 1.e (\$444) alleges a charged-off credit card account. Applicant opened the account in 2013-2014, and it became delinquent in late 2014. He contacted the creditor after he received the SOR and made a settlement offer. The creditor agreed to settle the account for \$312. Applicant paid the account on March 29, 2021. (AE A, AE N)

SOR ¶ 1.f (\$370) alleges a medical account in collection. After he was laid off in 2015, Applicant travelled to another state and was hospitalized and treated for kidney stones in 2016. The debt is for emergency services he received. Applicant never made any payments toward this debt. He paid the debt after it was charged-off in October 2020. (Tr. 62-64; AE F)

SOR ¶ 1.g (\$5,822) alleges a delinquent lease in collection. After he was laid off in 2015, Applicant was unable to make the rent payments, and he was evicted. (GE 7)

Applicant presented no documentary evidence of any payments toward this debt after his eviction. He claimed he contacted the creditor trying to settle the account in 2020 and 2021, but the negotiations have not been successful. (Tr. 69-70) He presented no documentary evidence of his contacts with the creditor or of other efforts to resolve the debt.

SOR ¶ 1.h (\$448) alleges a medical account in collection. After he was laid off in 2015, Applicant travelled to another state looking for employment and was hospitalized and treated for kidney stones in 2016. He believes the debt is for medical services he received during that period. Applicant paid the debt after he received the SOR. (Tr. 70-71; AE C, I)

SOR ¶ 1.i (\$228) alleges a delinquent insurance debt in collection. After he surrendered his car, Applicant failed to pay his car insurance. He contacted the creditor and settled the account for less than owed in April 2021. (AE, D, F; Tr. 70, 71)

SOR ¶ 1.j alleged that Applicant filed for Chapter 7 bankruptcy in December 2008. The bankruptcy was discharged in April 2009. (Tr. 40) Bankruptcy is a legal recourse and Applicant was entitled to obtain financial relief and secure a fresh start. A Chapter 7 bankruptcy discharge releases individual debtors from personal liability for unsecured nonpriority debts and prevents the creditors owed those debts from taking any collection action against the debtor. Applicant's SOR debts were acquired after his bankruptcy discharge in 2009.

I note that Applicant has student loans for about \$50,000, that are currently in forbearance and were not alleged in the SOR. On December 22, 2021, the DOE extended the student loan payment pause through May 1, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments, a 0% interest rate, and stopped collections on defaulted loans. The Federal Student Aid began accepting and reviewing applications from borrowers seeking loan forgiveness under the Public Service Loan Forgiveness (PSLF) Program in the fall of 2017. Applicant presented no evidence to show that he had applied for student loan forgiveness. He promised to pay his student loans when they become due.

Applicant believes that circumstances beyond his control prevented him from addressing his SOR debts between the time they became delinquent and February 2021, when the SOR was issued. He averred that his periods of unemployment, underemployment, and illness (kidney stones) adversely affected his ability to pay his financial obligations. Because of his low yearly income (below or about \$63,000), he was unable to recover from his financial problems between 2015 and 2019. He averred his income was insufficient to pay for his living expenses, current debts, and his delinquent debts. After he was hired by his current employer in April 2019, Applicant has been making around \$93,000 a year.

Applicant believes he has done his best to reestablish himself financially and to pay off his delinquent debts. He stated that he has taken a loan to pay off the two remaining SOR delinquent debts. He believes that his financial situation is good. Except

for two delinquent SOR debts, he is current in his recent financial obligations. He believes that his credit reports show that during the past three years he established a good credit payment history on all the new accounts he opened to reestablish his credit worthiness.

Applicant presented no documentary evidence of any contacts with creditors, of any settlements made, of payment agreements established, or of any payments made before the SOR was issued. Only SOR ¶ 1.e appears to have been paid before he received the SOR. He was required to participate in financial counseling when he filed for bankruptcy in 2008. He presented no evidence showing that he has participated in any recent financial counseling.

Applicant averred he has a working budget. (AE U) He stated that he now understands what he needs to do to get his financial problems corrected and to establish his financial responsibility. Applicant expressed his desire to resolve his financial problems. He now understands the seriousness of having negative information on his credit. He promised to resolve the two remaining delinquent debts in the near future.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The

applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance. (See Section 7 of EO 10865; See also EO 12968, Section 3.1(b) (listing prerequisites for access to classified or sensitive information))

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

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

Applicant’s financial history includes a Chapter 7 bankruptcy discharge in 2009. Following his bankruptcy discharge, he accrued nine delinquent accounts, totaling about \$41,000, of which three were charged-off and six were placed for collection. Applicant paid or resolved six small debts, totaling \$3,325 (SOR ¶¶ 1.c through 1.f, and 1.h and 1.i). He received a cancellation of debt (Form 1099-C) for the largest charged-off debt (SOR ¶ 1.a (\$25,733)). He claimed to be negotiating settlements or payment agreements with the creditors of the two remaining large debts (SOR ¶ 1.b (\$6,425) and SOR ¶ 1.g

(\$5,822)), totaling \$12,247. These two debts remain unresolved. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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.

AG ¶ 20(a) is not applicable because Applicant has unresolved ongoing debts that have been delinquent for many years. Applicant claimed circumstances beyond his

control prevented him from addressing his delinquent debts, i.e., periods of unemployment and underemployment and a period of illness.

While I accept that Applicant's financial problems may have been aggravated by circumstances beyond his control, his evidence is insufficient to show that he was financially responsible under his circumstances.

Applicant has been working for federal contractors since at least 2009. He knew or should have known of the periods of unemployment or underemployment in between contracts and should have anticipated and planned for such occasions. He submitted no documentary evidence to show his emergency or contingency plans in the event of future underemployment and unemployment.

Applicant was unemployed seven months in 2009; four months in 2010; two months in 2011; and three months in 2017. He testified that he was underemployed during most of his periods of unemployment working part-time jobs or "other gigs". Except for those periods of unemployment, Applicant has been fully employed by federal contractors since November 2009. He has been earning about \$93,000 a year since April 2019.

Applicant presented little documentary evidence of efforts to contact his creditors, of payments made, settlements agreements, or payment plans established before he received the SOR in February 2021. Only SOR ¶ 1.f appears to have been paid before the SOR was issued. All the other SOR accounts that Applicant paid were paid after the SOR was issued. I also note that SOR ¶ 1.c was paid in June 2021, after a judgment was filed against Applicant in September 2017.

Applicant received credit for his recent efforts to pay or resolve his delinquent debts after receipt of the SOR. Notwithstanding, I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His evidence is insufficient to explain why he was unable to address his delinquent accounts more diligently. Two of the SOR accounts remain unresolved and have been delinquent for many years. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's delinquent debts are not mitigated.

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 relevant 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), 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. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant, 51, has been working for federal contractors since at least 2009, while possessing eligibility for a clearance. He started the process to pay or resolve most of the delinquent accounts alleged in the SOR after receipt of the SOR. He has made a good start to establish his future financial responsibility. Notwithstanding, financial considerations security concerns are not mitigated at this time. He should have been more diligent addressing and resolving his delinquent accounts. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Applicant did not provide documentation about why he was unable to make greater documented progress sooner to resolve the SOR debts. He did not provide persuasive documentary evidence showing he made specific and reasonable offers to settle the SOR debts. His lack of documented responsible financial action in regard to these SOR debts for the last five years raises unmitigated questions about his 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 debt, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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.g:

Against Applicant

Subparagraphs 1.c-1.f, and
1.h-1.j:

For Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge