



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 20-02821
)
 Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on two student loans totaling \$34,759 and on seven other debts totaling \$2,045. Neither has he demonstrated progress toward resolving the debts he does not dispute nor disproved his liability for the adverse information on his credit record that he claims is inaccurate or otherwise invalid. Clearance eligibility is denied.

Statement of the Case

On September 21, 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.

On October 7, 2021, Applicant answered 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 18, 2021, the Government submitted a File of Relevant Material (FORM) consisting of a statement of the Government's position and seven documents pre-marked as Item 1 through Item 7. The SOR and Applicant's SOR response were included as Items 1 and 2, respectively. On November 18, 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 22, 2021. The December 22, 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. Items 1 through 7 were 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 September 21, 2021, Applicant owed student-loan debts in collection for \$25,616 (SOR ¶ 1.a) and \$9,143 (SOR ¶ 1.b); a Department of Veterans Affairs (VA) debt of \$379 in collection (SOR ¶ 1.c); a satellite-television service debt of \$32 in collection (SOR ¶ 1.e); a cellular-phone debt of \$282 in collection (SOR ¶ 1.f); and four medical debts of \$151 (SOR ¶ 1.d), \$165 (SOR ¶ 1.g), \$774 (SOR ¶ 1.h), and \$262 (SOR ¶ 1.i) in collection. (Item 1.) When Applicant answered the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.h, but then disputed the validity of the debt in SOR ¶ 1.e and the accuracy of the amount in SOR ¶ 1.f. He did not respond to SOR ¶ 1.i, which may have been missed as it was alleged out of alphabetical order. He explained he had no success in getting his health insurer to cover the medical debts that were incurred when he was shot during an armed robbery, and he had mistakenly thought that his student loans were deferred when he began graduate school classes online. (Item 2.) After considering Items 1 through 7, I make the following findings of fact:

Applicant is 39 years old. He and his ex-wife divorced in February 2014 after eight years of marriage. Their two children, a daughter age 14 and son age 12, live with his ex-wife. As of October 2017, Applicant had been in a cohabitant relationship since June 2013. (Item 3.)

Applicant has a bachelor's degree earned in May 2007. He was enrolled in a university for one semester before pursuing a graduate degree online in 2019. It is not clear in the record how long he pursued his studies online. He was not pursuing any studies in October 2021, although he planned on resuming his graduate studies online in January 2022. (Items 2, 3.) Applicant started working as an analyst on a government

contract with his current employer, an auditing firm, in February 2016. He was out of work while the contract was being renewed from July 2016 until September 2016, when he resumed his employment with the company. (Item 3.)

Applicant served honorably in the Army National Guard (ARNG) from November 2004 to October 2013. He was granted a Secret clearance in approximately October 2005. He was in the Reserve Officer Training Corps (ROTC) in college, and was commissioned as an officer on his college graduation. (Item 3.) In February 2010, at the rank of captain, he was activated for a full-time position as a program manager with the ARNG. He remained on active duty orders for an overseas deployment from August 2012 to June 2013. On his return, he worked from home full time doing manpower studies and analysis for a data solutions company on a government contract. He lost that job in September 2015 when the contract was not renewed. He was unemployed until November 2015. He had some temporary work from November 2015 until July 2016, when that work was outsourced overseas. It appears that he had two sources of income from February 2016, when he first started with his current employer, until July 2016, when he lost both jobs. (Item 3.)

On October 30, 2017, Applicant completed a Questionnaire for National Security Positions (SF 86) for his current employer. In response to an SF 86 inquiry concerning any delinquency involving routine accounts, Applicant listed four debts: an \$800 credit-card debt that he resolved in September 2016; medical bills totaling \$9,000 incurred because he was shot while being robbed in April 2015; a disputed \$282 cellular-phone debt (SOR ¶ 1.f) in collection that he claimed was resolved in May 2015 when he closed his account; and student loans totaling \$28,000 (SOR ¶¶ 1.a and 1.b). He explained that he would be re-enrolling in school that next semester and planned "to request deferment while in school." (Item 3.)

One or more of Applicant's credit reports from November 18, 2017 (Item 7), May 16, 2019 (Item 6), and March 23, 2020 (Item 5) showed that Applicant defaulted on the following accounts.

SOR ¶ 1.a — \$25,616

In August 2001, Applicant obtained a student loan for \$18,585. In April 2010, the loan had a balance of \$26,596. The loan was rated as current until April 2017. As of October 2017, the loan account was 180 days past due for \$2,233 with a total balance of \$29,007. (Items 6-7.) As of April 2019, the loan was in collections for \$25,313. (Item 6.) The loan reportedly had a delinquent balance of \$25,616 as of February 2020. (Item 5.)

Applicant explained during an August 9, 2018 personnel subject interview (PSI) with an authorized investigator for the Office of Personnel Management (OPM) that he had to continue to apply for hardship deferments of his student loans. He explained that he initially neglected his student loans due to lack of income. He indicated that his medical bills became his focus after he was injured while being robbed in April 2015. He admitted that he received a letter from a collections entity about the student-loan debts in approximately

2017. He asserted that he had recently set up an online account with the Department of Education to establish a repayment plan, and he was hoping to pay about \$100 to \$200 a month toward his student loans. Applicant stated that since medical bills were no longer a concern, he could focus on his student loans to bring them current. Applicant estimated that he owed about \$42,000 in total student-loan debts. (Item 4.)

SOR ¶ 1.b — \$9,143

In September 2006, Applicant obtained a student loan for \$7,339. The loan was deferred for a time. As of October 2017, Applicant was \$1,114 past due on a student loan with a \$12,447 balance. (Item 7.) As of February 2020, Applicant reportedly owed a delinquent student-loan balance of \$9,143. (Item 5.)

With respect to the student loans in SOR ¶¶ 1.a and 1.b, Applicant stated in response to the SOR in October 2021 that he had been making monthly payments of \$100 in 2019 until he began graduate school online and assumed he did not have to make payments on the loans. He apparently suspended his studies for a time, as he stated that he would be re-enrolling at the university starting in January 2022 and would “work to get this fixed.” (Item 2.)

SOR ¶ 1.c — \$379

In September 2019, the VA placed a \$379 debt for collection. As of February 2020, the debt was unpaid. (Item 5.) Applicant explained in response to the SOR that he had dropped an online class in graduate school when his father was placed in hospice care, although he did not specify when that occurred. Applicant took off a semester and then re-enrolled in graduate school. He mistakenly thought that the VA had withdrawn the funds for the debt from his GI benefits. He admitted his error and indicated that he could work with the VA to resolve the debt. (Item 2.)

SOR ¶ 1.d — \$151

In November 2018, a \$151 medical debt was placed for collection. As of March 2020, the debt had not been paid. (Item 5.)

SOR ¶ 1.e — \$32

In July 2017, a satellite-television company placed a \$31 debt for collection. As of November 2017, the collection entity was reporting a \$32 balance. (Item 7.) During his August 2018 PSI, Applicant stated that he had satellite-television service in 2014, but he cancelled the account when he moved. He asserted that he was never notified of an unpaid balance on the account. He indicated that he would inquire about the debt, and resolve any valid balance. (Item 4.) In October 2021, Applicant expressed his belief the debt was not valid as he had closed out his account and was unaware of any balance. (Item 2.)

SOR ¶ 1.f — \$282

In March 2017, a collection entity acquired a \$282 cellular-phone debt. As of October 2017, the debt was unpaid. (Items 3, 7.) Applicant explained during his August 2018 PSI that he thought the matter was closed after he told the collection entity that he was not under contract with the cellular-phone company when the debt was reportedly incurred. He explained that he would attempt to verify the debt and pay it in full within a month if it was shown to be valid. (Item 4.) In his October 2021 response to the SOR, Applicant indicated that he had closed the account after he returned from his deployment in 2013 and that he had “requested previously that this [debt] be removed from [his] credit report.” (Item 2.)

SOR ¶ 1.g — \$165

In May 2016, a \$160 medical debt was placed for collection. As of October 2017, the account had an unpaid balance of \$165. (Item 7.) When asked about this debt and the medical debts in SOR ¶¶ 1.h and 1.i during his August 2018 PSI, Applicant did not recognize the collection entities, but surmised that the medical debts in collections stem from his medical care after being victimized in a robbery. (Item 4.)

SOR ¶ 1.h — \$774

A medical debt was in collection for \$774 as of October 2017. (Item 7.) There is no evidence that debt has been paid.

SOR ¶ 1.i — \$262

In March 2016, a collection entity acquired a \$262 medical debt. As of May 2019, the debt was unpaid. (Items 6-7.)

Applicant was shot while being robbed in April 2015. Because his wallet was stolen, he did not have his medical insurance card to produce at the hospital, but he was able to provide his medical insurance information. He explained on his October 2017 SF 86 about the listed \$9,000 in medical delinquencies, which he subsequently asserted without corroboration includes the medical debts alleged in the SOR, that the creditor hospital “refused to look [him] up via [his] SSN and personal info,” and billed him directly for the medical charges. Thinking that his medical insurance would cover them, he ignored the medical bills. In approximately September 2017, the state began garnishing his paycheck at \$260 per month. He then started working with the state’s crime victims advocate office, and reportedly received assurances by the time of his August 2018 PSI that the medical bills would be paid and that he would be reimbursed for his wages garnished. (Items 3-4.) In response to the SOR, Applicant stated that he had tried unsuccessfully to resolve the medical debts with his health insurance provider. (Item 2.)

During his August 2018 PSI, Applicant described his financial situation as good. He indicated that payment of his medical expenses by the crime victims advocate office would

free up \$260 of his income each month, and he would be reimbursed for the wages that had been garnished for his medical debts. Additionally, he expected his financial situation to improve as his cohabitant girlfriend had just completed her master's degree and was seeking employment. Applicant expressed his belief that he would be able to rectify his outstanding delinquencies, assuming he could repay his student loans monthly in small increments. (Item 4.)

Applicant presented no documentation of any efforts to pay, settle, otherwise resolve, or dispute the debts in the SOR, even though he had an opportunity to update the evidentiary record in response to the FORM. He provided no information about his current income or expenses, including about any child support payments to his ex-wife. In addition to the delinquent student loans, VA debt, and the \$151 medical collection debt, Applicant's March 2020 credit report showed that he owed an outstanding credit-card balance of \$10,783 on an account closed by the credit grantor. The account had been ninety days delinquent from February 2019 to April 2019, although Applicant was making payments on the account. Applicant was current in his payments on a credit-card account with a \$2,585 balance. He made timely payments of \$296 per month on an unsecured loan for \$1,500 obtained in September 2018 and satisfied the loan in May 2019. He paid off a \$31,041 car loan in July 2019. His loan payments had been delinquent 30 days six times. (Item 5.)

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. One or more of the credit reports in evidence establishes the delinquent debts alleged in SOR ¶¶ 1.a-1.i. Although Applicant believes the medical debts should have been covered by his health insurer, he admits that he had no success in having them paid by his health insurer. He provided no documentation showing they have been paid by the crime victims advocate office or of the efforts he took in an attempt to address them. Regarding the \$32 satellite-television and \$282 cellular-phone debts, which he asserts are invalid or inaccurate, he failed to disprove his liability for those debts. The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015) (citing, *e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006)). Disqualifying condition AG ¶ 19(c), “a history of not meeting financial obligations,” primarily applies.

The Government’s case for AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” is not conclusively established, despite the absence of documentation showing reasonable steps to resolve his delinquent debts. During his August 2018 PSI, Applicant expressed his intention to resolve his legitimate debts. With respect to his student loans, he stated that he had recently established an online account with the Department of Education to establish a repayment plan. Applicant stated in response to the SOR in October 2021 that he had been making monthly payments of \$100 in 2019 until he began graduate school online and assumed he did not have to make payments on the loans. He stated that he would be re-enrolling at the university starting in January 2022 and would “work to get this fixed.”

Applicant has the burdens of production and persuasion in establishing sufficient mitigation to overcome the financial concerns raised by his failure to meet some of his financial obligations according to contractual terms. AG ¶ 20 provides for mitigation under one or more of the following conditions:

- (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.

Applicant's failure to provide documentation of any payments, settlement negotiations, student-loan deferments, creditor contacts, or other attempts to resolve the delinquent debts of concern to the DOD makes it difficult to apply AG ¶¶ 20(a), 20(c), or 20(d). An applicant's ongoing, unpaid debts evidence a continuing course of conduct and are considered recent for mitigating purposes under AG ¶ 20(a). *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)). Payments of \$100 a month in 2019 toward his student loans could be considered a good-faith effort under AG ¶ 20(d) to address his student-loan defaults, but there is no proof of any such payments. His March 2020 credit report shows that his student loans have been inactive since February 2017 (SOR ¶ 1.a) and January 2017 (SOR ¶ 1.b). He provided no proof of payments that would disprove the accuracy of that credit information.

Although the disputed cellular-phone and satellite-television debts have been dropped from his credit report, Applicant provided no evidence that the debts are not his responsibility. The Appeal Board noted in ISCR Case No. 14-03612 at 4 (App. Bd. Aug. 25, 2015) and reiterated in ISCR Case No. 26-01338 at 3 (App. Bd. Jul. 13, 2018) that the fact that a debt no longer appears on a credit report is not "meaningful, independent evidence as to the disposition of the debt." 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 if they become no longer legally collectible because of a state statute of limitations, whichever is longer. *See* Title 15, U.S.C. § 1681c. Debts may also be dropped from a credit report upon dispute when the creditor believes the debt is not going to be paid or when the debt has been charged off.

AG ¶ 20(b) has some applicability, assuming the medical debts alleged in the SOR were incurred because he was the victim of a robbery, which is an unforeseen circumstance contemplated within that mitigating condition. However, AG ¶ 20(b) requires that the individual act responsibly to address the debts. It is unclear when he contacted his health insurer about the debts. The medical debts in SOR ¶ 1.g and 1.i were placed for collection in 2016. The debt in SOR ¶ 1.h was in collection as of October 2017. The date of last activity for the \$151 medical debt in SOR ¶ 1.d is November 2018. 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 (App. Bd. Dec. 19, 2018.) Uncorroborated

assertions that he would work on fixing the debts are not a substitute for a track record of payments.

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 provided no information about his income or expenses so a reasonable assessment cannot be made of when the delinquencies will be resolved. 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.

Applicant asserts that he did not realize that his student loans were not deferred when he started graduate school online. He has known since his August 2018 PSI about the debts of concern to the Government. As of October 2021, he was still maintaining that he would work to get his student loans and VA debts fixed. Concerns about his financial judgment are not assuaged by his ongoing failure to give sufficient priority to resolving the issues of security concern. He provided no evidence of a circumstance that could justify his lack of progress toward resolving the debts. 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.i:

Against 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