



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



In the matter of:)	
)	
)	ISCR Case No. 20-03581
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

04/06/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 30, 2018. On January 19, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD issued the SOR under Executive Order 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on or about March 9, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on November 3, 2021. On January 12, 2022, following consultation with the parties, DOHA issued a notice scheduling the hearing for February 8, 2022. The hearing was to take place virtually, through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. I left the record open until February 18, 2022, to allow Applicant the opportunity to submit additional information. Applicant timely submitted five post-hearing exhibits, which are marked as AE H through L, and admitted without objection. The documents are described in the Facts section, below. DOHA received the transcript (Tr.) on February 15, 2022.

Procedural Issue

At the start of the hearing, Department Counsel called attention to a clerical error in the processing of the SOR. While there is a true and correct copy of the SOR in the hearing office file, the copy of the SOR that was mailed to Applicant (and which he mailed back, with an answer to each allegation noted in the margin) erroneously contained the name of a different applicant. The language of each allegation in the SOR copy he received is identical to the correct copy of the SOR in the file, and to which the parties referred at the hearing. To rectify the error, I amended the Answer by changing the name in the caption so it referred to Applicant (as the caption of this decision does), and not to someone else. This was done without objection, and no substantive allegations were affected. (Tr. 13-15)

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.o, with a narrative explanation. His admissions and explanation are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He and his wife have been married since 2011, and they have three young children. He graduated high school in 2007 and attended some college, using loans that are now alleged in the SOR. He served on active duty in the U.S. Navy from 2013 to 2017, with an honorable discharge. He was an E-4 sonar technician. (AE K) He said he held a clearance in the Navy. (Tr. 10, 26, 29-30, 33, 87; GE 1) He was awarded a Navy and Marine Corps Achievement Medal, a Good Conduct Medal, the National Defense Service Medal, and the Global War on Terrorism Service Medal. (AE K)

After leaving the Navy in 2017, Applicant moved with his family to a small town in a neighboring state. He found it difficult to find work to pay off the bills that remained from his time in the Navy. He worked for a glass manufacturing company, among other jobs, before finding his current position in the defense industry in October 2018. He currently earns about \$31 an hour. (AE L) This is well more than the hourly wage in his two prior

jobs (\$16.50 and 11.23 an hour). (Tr. 44) He estimated that he earned about \$59,000 in income in 2021, and estimated a similar income in 2020. (Tr. 30-32, 43-44)

Applicant said he incurred debts through schooling and a repossessed auto he could not afford when he left the Navy. (Tr. 28-29) He also had other debts that he thought were resolved when he left, and incurred more debts after his income dropped in civilian life. (Tr. 84-85) His wife is largely a homemaker caring for their young children.

Applicant acknowledged that when he was in the Navy, the DOD issued him a letter of intent (LOI) to deny his clearance, for financial reasons, in 2013. He was granted a conditional clearance in 2014, contingent on documentation of monthly financial statements to his command. He did not have to participate in formal credit counseling beyond keeping his command informed of his financial plans. (Tr. 10, 33, 45-47) The LOI and the DOD's decision are not in the record. Applicant acknowledged that his financial plans and structure deviated after he was granted a clearance. He took out a car loan of \$600 a month. (Tr. 47)

While in the Navy, Applicant was arrested on a domestic battery charge after becoming intoxicated, and received non-judicial punishment. (This offense was not alleged in the SOR and is not considered as disqualifying conduct). His wife was also suffering from a difficult medical condition (unrelated to the domestic offense). Applicant sought guidance from a chaplain, and these factors prompted him to leave the Navy and return to civilian life. As noted, he was discharged honorably. (Tr. 47-48, 70-72, 85-86; AE K)

In addition to working full time, Applicant is also attending technical school full time to earn a bachelor's degree in mechanical engineering. (Tr. 29) His current schooling is covered under the GI Bill. (Tr. 93-95) He works a flexible schedule so he can be home to attend school and help with child care. He has a long and lengthy commute to and from work, to a different metropolitan area from where he lives. (Tr. 32-33)

Applicant has a few thousand dollars in a 401k plan at work. (Tr. 50) He estimated that during winter, with high heating bills, he incurs about \$4,500 in monthly expenses. This is also about what he earns each month including about \$400 monthly from the GI Bill. He generally breaks even financially, but has little to no money saved in his bank account, and lives paycheck to paycheck. (Tr. 50-52, 82, 88-89, 93-95) Applicant is working off his other smaller debts, and does not want to incur new debt, while trying to provide for his family. (Answer; Tr. 27-29, 81, 84) He wants to further his career and earn more income, pay his debts, and buy a home. He loved sonar work in the Navy, and wants to be able to do similar work as a contractor. (Tr. 27)

Applicant purchased a used car in May 2020. He traded in another car for \$1,000 and made a \$1,000 down payment. (Tr. 52) (The transcript also says the down payment was for "\$200,000," a figure I have disregarded as clearly erroneous) (Tr. 52) He is current on his \$348 monthly car payment. (AE F; GE 5 at 2) Applicant attempts to keep a budget, has watched credit counseling videos online, and has spoken to the VA about their credit

counseling program. (Tr. 54, 83) He submitted credit report excerpts reflecting that he has between \$25,800 and about \$27,000 in total debt (AE B, AE C)

The Guideline F allegations in the SOR total about \$59,000. They are established through Applicant's admissions and by the credit reports in the record. (GE 2-GE 5) Applicant also disclosed on his SCA that he had student loans in deferment, and had a credit card "shut off." (GE 1 at 48) The current status of his SOR debts is as follows:

SOR ¶ 1.a (\$251) is a gas bill placed for collection. It was incurred when Applicant lived in the neighboring state after he left the Navy. He believes the debt has been paid, but is not certain. (Tr. 36, 55; GE 4 at 1)

SOR ¶ 1.b (\$1,260) is an account placed for collection by a phone company. Applicant testified that earlier this year he negotiated a \$500 settlement, to be paid at the end of March 2022. (Tr. 35-36, 56-58; GE 5 at 2) The record closed before this payment was documented, but I consider it resolved.

SOR ¶ 1.c (\$369) is a car insurance bill placed for collection. It remains unpaid, though Applicant has attempted to settle it. (Tr. 58-59; GE 5 at 2)

SOR ¶ 1.d (\$841) is an unpaid lease from an apartment where Applicant lived when he was in the Navy. He disputed the bill, since he thought his living expenses in the Navy were covered, but says his wife told him he still owes it. He now intends to pay the debt. (Tr. 59-61; GE 4 at 2)

SOR ¶ 1.e (\$3,672) is a bill placed for collection. Applicant admitted the debt but is unsure what it is for, though it might be a cell phone bill. He has attempted to learn more. It remains unpaid, though at \$3,462, less than alleged. (Tr. 61-62; GE 5 at 3)

SOR ¶¶ 1.f (\$4,679), 1.g (\$5,606), and 1.h (\$4,994) are federal student loan debts placed for collection. They were delinquent as of December 2020. (GE 4 at 3) Applicant made several monthly \$5 payments on his student loans in 2020 and 2021, through a six-month loan rehabilitation program. His federal student loans are now consolidated and in deferment or forbearance because he is in school. (AE D, AE G, AE H, AE I, AE J; Tr. 37-41, 62-66) In addition, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Biden Administration has extended the COVID pandemic relief program, under which federal student loan payments are deferred, through August 2022.

Applicant estimated that he has about \$15,000 to \$20,000 in student loans from his undergraduate education prior to joining the Navy. (Tr. 38-41) This is confirmed by a recent credit report. (GE 5 at 3) Applicant mistakenly believed he did not have to pay them, or they were deferred, while he was in the Navy. He also did not make payments on these loans after leaving the Navy. (Tr. 65-66) He said his current schooling is covered by the GI bill. (Tr. 41-42)

SOR ¶ 1.i (\$2,831) is a credit-card account that has been charged off by a financial institution. The debt remains from Applicant's time in the Navy. He could not afford to pay it when he left the Navy. It remains unpaid, though Applicant has attempted to pursue settlement. (Tr. 67-68; GE 5 at 4)

SOR ¶ 1.j (\$26,044) is a charged-off account relating to an auto repossession. He bought the auto in 2016, when he was in the Navy, trading in his wife's car. Applicant said he owed \$17,000 when the vehicle was repossessed, and that, after it was sold at auction, he owed \$11,000. The Government's evidence indicates that he owes about \$18,200 after the resale. The debt remains unpaid. (Tr. 28, 34, 68-69; GE 5 at 2;)

SOR ¶ 1.k (\$4,405) is a credit account that has been charged off. Applicant and his wife used the account for personal expenses, like holidays and trips. He also used the account for a loan on a motorcycle that he bought in 2017, right before he left the Navy. (Tr. 69-73) He sold the motorcycle but GE 5 indicates that for the account at SOR ¶ 1.k, Applicant owed over \$7,000, as of June 2021, and the debt remains outstanding. (Tr. 73-74; GE 5 at 3;)

SOR ¶ 1.l (\$973) is an account that has been charged off. Applicant did not recognize the debt, though it is listed on his credit reports. (Tr. 74; GE 4 at 5, GE 5 at 5)

SOR ¶ 1.m (\$2,855) is an account that has been charged off. This is the same creditor as for the debt in SOR ¶ 1.e, and Applicant believes they are related. Applicant has contacted the creditor to resolve the debt but it remains unpaid. Evidence shows that the account has been charged off at \$4,954. (GE 3 at 2; Tr. 75-77)

SOR ¶ 1.n (\$874) is an electricity bill placed for collection. (GE 3 at 2) It is from Applicant's time in the neighboring state. He is unsure of its status. (Tr. 77)

SOR ¶ 1.o (\$262) is an account placed for collection by an internet or cable provider. Applicant is unsure of its current status. (Tr. 77-78) It is shown on a 2018 credit report, but no others. (GE 2 at 8)

Applicant submitted proof that another, unalleged delinquent debt, to a military credit card account, had been paid in April 2020. (Tr. 34-35, 78-79; AE E) He always files his income tax returns and does not owe back taxes. (Tr. 79-80)

Two work references provided recommendation letters. Mr. C has worked with Applicant for about three years. Mr. C was his supervisor for one year. According to Mr. C, Applicant provides quality work in all respects, has good communication skills, and is a dependable team player. He has good judgment and a mature, practical outlook. He is an asset to the organization, and Mr. C recommends him highly. (AE A)

Mr. M attested that Applicant is a good co-worker who offers useful, knowledgeable guidance. He is an essential part of the team, and he his detail-oriented approach helps

the organization's quality control efforts. He has an excellent work ethic and performs with integrity and professionalism. (AE A)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

The Guideline F allegations in the SOR concern multiple debts, including student loans, an auto repossession, and other consumer and utility accounts, which became delinquent both during and after Applicant's time in the Navy. The SOR debts are listed on Applicant's credit reports and he admits them. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or 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.

Applicant has numerous unresolved financial delinquencies. He had a difficult transition to civilian life as he did not anticipate the financial impact of leaving the Navy and had difficulty finding steady employment with a decent income. Yet he also had financial issues while in the Navy, as evidenced by his acknowledgment of a prior financial SOR. His financial issues have continued for several years, and are ongoing. AG ¶ 20(a) does not apply.

For similar reasons, AG ¶ 20(b) has only limited application. Applicant's financial problems began in the Navy due to spending beyond his means. His financial issues increased after he left the Navy and he fell further behind on his debts, due to limited financial resources. However, as his debts began due to overspending, they are not largely due to circumstances beyond his control. And even assuming that conditions like his underemployment were largely beyond his control, he did not establish that he has acted responsibly to address and resolve his delinquencies.

Applicant has pursued some credit counseling, both online and through the VA. But he has not provided sufficient evidence that his debts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant's student loans are from a prior period of education. They became delinquent like most of his other debts, in similar circumstances. Applicant made small payments in 2020, as required, to rehabilitate his student loan debts before the CARES Act took effect, and his loans are now deferred and no longer past due. AG ¶ 20(d) applies to his student loans, but otherwise, AG ¶ 20(d) has little application. While he has made some efforts to contact his creditors and negotiate settlements or other repayments, he did not provide enough evidence to support a finding that he has made a good-faith effort to rectify his financial issues. To do that, he needs to establish more of a track record of steady payments towards his debts.

Whole-Person Concept

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

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

Under AG ¶ 2(a), 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has a history of financial instability, going back to his days in the Navy. Applicant's debts will remain a security concern until he shows a documented track record of good-faith efforts to resolve them. This is not to say that he cannot become eligible for access to classified information in the future if he addresses his debts responsibly and becomes more financially stable. But the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not provide sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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.c-1.e:	Against Applicant
Subparagraphs 1.b, 1.f, 1.g, 1.h:	For Applicant
Subparagraphs 1.i-1.o:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge