



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



In the matter of:)
)
) ISCR Case No. 20-01498
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/06/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to make sufficient timely progress resolving the debts listed on the statement of reasons (SOR). Guideline J (criminal conduct) security concerns are mitigated; however, Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 28, 2019, Applicant completed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On October 5, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F and J. (HE

2) Applicant provided his response to the SOR on an unspecified date, and he requested a hearing. (HE 3)

On May 11, 2021, Department Counsel was ready to proceed. On January 20, 2022, the case was assigned to me. On February 10, 2022, the Defense Office of Hearings and Appeals issued a Notice setting the hearing date for March 10, 2022. (*Id.*) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered 13 exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 17-18; GE 1-GE 13) On March 21, 2022, DOHA received a copy of the transcript. Applicant provided 16 exhibits after his hearing, and all exhibits were admitted without objection. (AE 1-AE 16) On April 15, 2022, the record closed. (Tr. 68)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.e, 1.f, and 2.b. (HE 3) He denied the other SOR allegations. He also provided mitigating information. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 39-year-old employee of a DOD contractor who has worked for this employer since October 2018. (Tr. 8; GE 1) In 2000, he graduated from high school. (Tr. 8) In 2019, he received a bachelor's degree. (Tr. 8; AE 13) He served in the Navy from 2007 to August 2016. (Tr. 9) He received a general discharge under honorable conditions. (Tr. 9) He was a petty officer second class (E-5) when he was discharged. (Tr. 9) His Navy specialty was logistics. (Tr. 9) He was married from 2008 to 2011, and his two children are ages 12 and 14. (Tr. 10) His dating relationship with his former spouse continued until 2013. (Tr. 25)

Financial Considerations

Applicant cited a contentious divorce in 2011 as the genesis of his financial problems leading up to his 2014 bankruptcy. (Tr. 22) He had expensive legal bills because his former spouse made allegations against him. (Tr. 23) He went back to family court three or four times to clarify visitation rules. (Tr. 24) He was not deployed after 2012. (Tr. 24) He was unemployed from August to October 2016, from January to September 2017, and from April to October 2018. (Tr. 45; GE 13 at 2) On April 16, 2019, an Office of Personnel Management (OPM) investigator confronted Applicant about several delinquent debts. (GE 13 at 6-7) His current annual salary is \$48,000. (Tr. 45) However, it is unclear whether he included his income from the Department of Veterans Affairs (VA) or from his girlfriend in his income. (GE 13 at 2) His monthly child-support obligation is \$1,100, and he has the child-support payment made automatically from his paycheck. (Tr. 46) His monthly rent is \$1,250, and his car payment is \$600. (Tr. 47) He said he uses

a written budget, and he said he would provide it after his hearing. (Tr. 48) However, he did not provide his budget. (Tr. 48) His tax returns are filed, and he does not currently owe taxes. (Tr. 49-50) He did not provide copies of his tax returns for the last three years.

The SOR includes the following financial allegations:

SOR ¶ 1.a alleges Applicant's debts were discharged in June 2014 under Chapter 7 of the Bankruptcy Code. His unsecured nonpriority claims totaled \$47,949. (GE 6 at 9) His priority claims included \$3,203 in taxes, \$22,909 in student loans, and \$1,394 in domestic support. (*Id.* at 10) He owed federal income taxes for the following years: 2009 (\$906); 2011 (\$736); 2012 (\$781); and 2013 (\$780). (*Id.* at 20) In his February 28, 2019 SCA he disclosed his bankruptcy in June 2014; however, he did not disclose that he failed to pay his federal taxes when required by law in the previous seven years. (GE 1 at 50) At his hearing, he said he paid his federal income tax debt with refunds for subsequent tax years. (Tr. 26) However, he did not provide proof that his federal income taxes were paid. He received financial counseling as part of the bankruptcy process. (Tr. 44; GE 6)

SOR ¶ 1.b alleges a judgment was entered against Applicant in April 2015 for \$1,506. Payment was delayed because he could not locate the creditor. (Tr. 32) He employed a lawyer to assist him in arranging payment. (Tr. 32) On August 27, 2021, he paid the judgment. (Tr. 31; AE 1)

SOR ¶¶ 1.c and 1.e allege two judgments were entered against Applicant from the same creditor in January 2016 for \$503 and in February 2016 for \$1,270. Applicant satisfied the debt in SOR ¶ 1.c on November 20, 2020, and the debt in SOR ¶ 1.e on December 11, 2020. (Tr. 38-39; SOR response at 3; AE 2-3)

SOR ¶¶ 1.d and 1.g allege two judgments for city tax debts entered against Applicant in February 2016 for \$62 and in February 2018 for \$62. (AE 5) Applicant asserted he did not owe the two debts, and that he had a letter showing payment for the first one in February 2016. (Tr. 35, 41) He did not provide a copy of the letter. On December 28, 2020, he satisfied the judgment in SOR ¶ 1.d, and on December 16, 2020, he satisfied the judgment in SOR ¶ 1.g. (Tr. 40-41; AE 6)

SOR ¶ 1.f alleges a judgment was entered against Applicant in March 2017 for \$1,698. On May 3, 2021, he satisfied the judgment. (Tr. 40; AE 4)

SOR ¶¶ 1.h and 1.i allege two charged-off debts for \$451 and \$863. On November 18, 2020, the creditor for the debt in SOR ¶ 1.h wrote the debt was "satisfied in full." (SOR response at 10) On November 24, 2020, the creditor for the debt in SOR ¶ 1.i wrote the last payment was posted on November 20, 2020. (SOR response at 11)

SOR ¶¶ 1.j, 1.k, and 1.l allege three debts placed for collection for \$863, \$512, and \$353. On December 2, 2020, the creditor for the debt in SOR ¶ 1.j wrote that the account was settled for less than the full balance on November 30, 2020. (Tr. 41-42; SOR response at 12) On November 14, 2020, the creditor for the debt in SOR ¶ 1.k wrote the account was settled for less than the full balance. (Tr. 42; SOR response at 13) On

November 13, 2020, the creditor for the debt in SOR ¶ 1.I wrote and thanked Applicant for meeting his obligation. (Tr. 42; SOR response at 14)

Applicant intends to avoid delinquent debt in the future. (Tr. 44) He has read at least two books on investing and finance. (Tr. 44) He has educated himself through multiple sources on how to maintain his financial responsibility. (Tr. 44) He has several non-SOR debts, which are in paid or in paid as agreed status in his credit reports. (GE 2, 3)

Criminal Conduct

The SOR contains the following criminal conduct allegations:

SOR ¶ 2.a alleges Applicant received nonjudicial punishment (NJP) while in the Navy for falsifying dependency documentation in order to receive additional financial benefits. In his February 28, 2019 SCA Applicant said he received NJP in October 2014 for “failure to obey an order [and] false statements.” (GE 1 at 25) He was “found guilty,” and he received 45 days of extra duty. (*Id.*) He said his command learned he was not married when his former spouse called his command and informed them of the change in his marital status. (Tr. 52) Applicant admitted that he failed to update his personnel records to reflect his divorce. (Tr. 50) Applicant told an OPM investigator that the falsification related to an allegation he was claiming “additional funds on his taxes.” (GE 13 at 2) He said it was an oversight, and he did not receive any additional benefits. (Tr. 52-53)

In his follow-up September 17, 2019 OPM interview, Applicant said his former spouse was listed as his dependent on his military dependency document, which would have incorrectly entitled her to military/TRICARE medical benefits, use of the commissary, possession of a Navy identification card, etc. (GE 13 at 8) He received 45 days of extra duty, reduction to E-4 (suspended), and forfeiture of \$1,213 pay per month for two months (suspended) from his commander as a result of the NJP disposition. (Tr. 53-54; GE 13 at 8) There is no record evidence that Applicant received more pay due to his records incorrectly indicating he was married in 2014 when he was actually divorced in 2011. There is no evidence his former spouse fraudulently received medical care or other benefits to which she was not entitled due to his failure to timely update his personnel records concerning his divorce.

SOR ¶ 2.b alleges Applicant pleaded no contest for violation of a custody or protection order in February 2016. Applicant said from 2012 to 2017, his former spouse “literally made [his] life a living hell by filing false undocumented claims of things like abuse, stalking, kidnapping, just – you name it. Anything regarding her and the children, she filed it.” (Tr. 55) She alleged that he beat his children with a belt, punched his eight-year-old son, and that he hit his son’s head against a concrete wall, giving him a concussion. (Tr. 61-62) Applicant claimed the judge told him that a no contest plea, “Well, it doesn’t mean you’re guilty or not guilty . . . but we can conclude this case – by that plea.” (Tr. 56) Applicant decided that it would be best to expedite resolution of the charge with a no contest plea. (Tr. 56) He received a fine and a suspended jail sentence. (Tr. 56)

A child protective service investigation decided her allegations of physical abuse were unfounded. (Tr. 62) The Navy based his discharge on his conviction. (Tr. 57) None of his former spouse's allegations of his abusive conduct resulted in convictions. (Tr. 55-59)

Applicant denied that he physically abused his former spouse or his children. (Tr. 64) In order to avoid conflict with his former spouse, Applicant has ensured that he has not had any contact with his former spouse since 2016. (Tr. 52, 60, 67)

Character Evidence

Applicant received excellent Navy evaluation reports from 2011 to 2014. (AE 9-AE 11) He received a negative Navy evaluation report in 2015, which cited his NJP, and in 2016, which cited his violation of the protection order. (GE 13 at 8-9) He received the following Navy medals and awards: two Navy Good Conduct Medals, a letter of commendation; three Navy and Marine Corps Achievement Medals; National Defense Service Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; two Sea Service Deployment Ribbons; and Navy Expert Pistol Medal. (Tr. 20; AE 8, AE 12) He received an early promotion to petty officer second class. (Tr. 20) He received a certificate of recognition, and his current employer has promoted him. (Tr. 20; AE 14) He received a certificate of voluntary service from the state public schools, and he is a state basketball official. (AE 15; AE 16)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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.

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).

Applicant described several circumstances beyond his control, which adversely affected his finances. His contentious divorce in 2011 led to his 2014 bankruptcy. He had expensive legal bills because his former spouse made allegations against him. He was unemployed from August to October 2016, from January to September 2017, and from April to October 2018. However, "[e]ven if applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the judge could still consider whether applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Another component under AG ¶ 20(a) is whether Applicant maintained contact with several SOR creditors and attempted to negotiate partial payments to keep debts current. He did not prove that he maintained contact with several of his SOR creditors or that he made offers to make partial payments to them prior to 2020.

The SOR does not allege that Applicant failed to disclose on his February 28, 2019 SCA that he owed \$3,203 in federal income taxes in 2014 when he filed for bankruptcy for the following years: 2009 (\$906); 2011 (\$736); 2012 (\$781); and 2013 (\$780). While there is no evidence he failed to timely file his federal income tax returns, he owed delinquent taxes in 2014 and for several years after that because his taxes were paid

through transfers from more recent tax years. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegations will not be considered except for the five purposes listed above.

An administrative judge is "required to examine all the circumstances surrounding the debts and their eventual satisfaction" including the timing of any settlements, applicant's salary for the past several years, and whether a debt or debts "had already been reduced to judgment." ISCR Case No. 20-01656 at 5 (App. Bd. Mar. 31, 2022) (citing ISCR Case No. 03-04704 at 4 (App. Bd. Sep. 21, 2005)). The Appeal Board has noted, "an applicant who resolves financial problems after being placed on notice his or her security clearance may be in jeopardy may lack the judgment and self discipline to follow rules and regulations over time or when there is no immediate threat to his [or her] own interests." ISCR Case No. 17-01213 (App. Bd. June 29, 2018) (citing ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016)).

After Applicant's bankruptcy in 2014, creditors obtained six judgments against him. Two additional debts were charged off, and three additional debts were placed for collection. Applicant receives some credit for beginning to resolve his delinquent debts before the SOR was issued; however, all 11 of the SOR debts were resolved after the SOR was issued on October 5, 2020. There was no evidence presented of any efforts to resolve any SOR debts before his OPM interview. Applicant did not provide a budget or other documentation about his financial resources or show he was unable to make greater progress resolving his delinquent SOR debts before the SOR was issued. "In this regard, the Appeal Board has previously stated that it is reasonable for a Judge to expect an applicant to present documentation corroborating actions taken to resolve debts." ISCR Case No. 19-03757 at 3 (App. Bd. Aug. 18, 2021) (citing ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 15, 2020)).

Applicant did not establish that he was unable to make more documented progress resolving his delinquent debts before the SOR was issued. There is insufficient assurance that his financial problems will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.”

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The record establishes AG ¶¶ 31(a) and 31(b). Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant received NJP in October 2014 for failure to obey an order and false statements. He failed to update his personnel records to reflect his divorce. His former spouse was listed as his dependent on his military dependency document, which would have incorrectly entitled her to military/TRICARE medical and other benefits. He received 45 days of extra duty, reduction to E-4 (suspended), and forfeiture of \$1,213 pay per month for two months (suspended) from his commander as a result of the NJP disposition.

Applicant was convicted of violation of a custody or protection order in February 2016. He received a suspended jail sentence. The Navy based his discharge on his conviction.

Applicant's criminal offenses are not recent. He is no longer involved with his former spouse. Criminal offenses are unlikely to recur and do not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶ 32(a) applies. Criminal conduct security concerns are 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 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(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines J and F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 39-year-old employee of a DOD contractor who has worked for this employer since October 2018. In 2019, he received a bachelor's degree. He served in the Navy from 2007 to August 2016, and he received a general discharge under honorable conditions. He was a petty officer second class when he was discharged. He received excellent Navy evaluation reports from 2011 to 2014. He received several Navy medals and awards. He received a certificate of recognition, and his current employer has promoted him. He received a certificate of voluntary service from the state public schools, and he is a state basketball official.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. His bankruptcy was a reasonable decision in light of his substantial delinquent debts. His criminal conduct is not recent and is unlikely to recur.

The evidence against grant of a security clearance is more substantial at this time. He received a fresh financial start after his bankruptcy in 2014, and then he began

accumulating new delinquent debts. Creditors obtained six judgments, and he accrued five additional delinquent debts after Applicant's bankruptcy in 2014. The 11 SOR debts were resolved after his SOR was issued in October 2020. He did not provide documentation about why he was unable to make greater documented progress sooner resolving several delinquent SOR debts. His financial history 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 establishing a track record of financial responsibility, and a better record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated criminal conduct security concerns; however, he failed to mitigate financial considerations security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.l:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all of the circumstances in this case, 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.

Mark Harvey
Administrative Judge