



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-03026
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
 For Applicant: *Pro se*
 04/25/2022

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 26, 2019. On December 1, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant submitted an answer to the SOR (Answer) and requested a decision based on the written record in lieu of a hearing. Although he initially signed the Answer on January 31, 2021, it appears to have not been submitted until on or about June 18, 2021, for reasons not explained in the record. On November 5, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 8. He was given an

opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on December 8, 2021, but did not respond to the FORM or object to the Government's evidence. The case was assigned to me on March 3, 2022.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Items 3 through 8 are admitted into evidence. Although Item 4 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case.

Findings of Fact

Applicant, age 39, divorced his wife of 12 years in April 2019, following a period of separation that began in February 2017. They have three children: one child, age 14; and twins, age 7. He has cohabited with another woman since 2018. He received an associate degree in 2009 and a bachelor's degree in 2013. He attended college for eight months in 2016. As of December 2019, he had spent four months working towards a master's degree in cybersecurity. He has been employed by a defense contractor as a senior cloud security engineer since 2018. (Items 2, 3, 4)

Applicant was honorably discharged from the U.S. Marine Corps in 2014, after nine years of service. He continued to serve on Inactive Ready Reserve status until 2018. He deployed to Iraq for seven months in 2006, and to Afghanistan for one year in between 2009 and 2010. He was granted security clearances in connection with his military service in 2006 and 2012. (Items 3, 4)

The SOR alleged seven delinquent debts totaling \$104,397. In his Answer, Applicant admitted that he was responsible for all but two of the debts alleged. He denied the debt alleged in SOR ¶ 1.g (a \$39,536 past-due mortgage loan account). He admitted to being responsible for only half of the debt alleged in SOR ¶ 1.c (a \$17,000 charged-off automobile loan account). (Item 2)

The collection agent for the credit-card account alleged in SOR ¶ 1.a obtained an \$11,063 judgment against Applicant in May 2019. He proposed a payment plan of \$100 per month and made other "offers" to resolve the judgment, but could not reach an agreement with the agent. In April 2021, the agent filed a garnishment to satisfy the judgment. Applicant was summoned to appear in court in September 2021 to respond. In his Answer, Applicant asserted: "Because this account was included in my divorce settlement, I am unable to settle the debt in a lesser amount without impacting other legalities." He also stated that, in anticipation of his September court appearance, he was saving money to either resolve the debt in full or at least reduce the amount of the

garnishment. The status of the garnishment was not indicated in the record. Applicant's October 2021 credit report referred to the credit-card account as a "paid charge off" and showed a \$0 balance. This debt has been resolved. (Items 2, 3)

The collection agent for the loan account alleged in SOR ¶ 1.b obtained a \$4,628 judgment against Applicant in about May 2019. Applicant reached a settlement with the collection agent to resolve the debt via a lump sum payment of \$2,812, which he paid in December 2020. He derived the funds for the payment from a \$2,380 employment bonus and savings. In 2020, he created a "small emergency spending fund" savings account to which he contributed funds from his "increased earnings" and the decreased expenses that stemmed from "staying at home more due to COVID-19" and "overall lifestyle changes." The record did not indicate the amount of his contributions or the balance of the savings account. Applicant's October 2021 credit report showed the loan account with a \$0 balance. This debt has been resolved. (Items 2, 3)

Applicant and his ex-wife jointly financed the purchase of a vehicle during their marriage for her primary use. After the divorce court initially assigned his wife responsibility for making the loan payments, she surrendered the vehicle as part of her Chapter 7 bankruptcy proceedings and received a discharge of the loan in December 2018. The lender sold the vehicle at auction and charged-off the \$17,000 deficiency balance, as alleged in SOR ¶ 1.c. The divorce court ordered the parties to "equally satisfy" any deficiency balance. In his SOR answer, Applicant stated that he planned to negotiate a payment plan to resolve the full amount of this debt since his ex-wife has been unwilling to satisfy this debt "without further court involvement." His October 2021 credit report indicated no change in the alleged balance on this loan account. This debt remains unresolved. (Items 2 – 4, 6 – 8)

The debt alleged in SOR ¶ 1.d is a credit-card account with a delinquent balance of \$18,695 that the creditor charged off in about May 2019. Applicant has been paying \$187 per month towards this debt since at least August 2019. Although this debt is not yet resolved, the reduced balance of \$13,646 on Applicant's October 2021 credit report shows that he has been complying with the payment plan. (Items 2 – 8)

The debt alleged in SOR ¶ 1.e is a credit-card account with a delinquent balance of \$12,911 that the creditor charged off in about May 2019. Applicant has been paying \$130 per month towards this debt since at least June 2019. Although this debt is not yet resolved, the reduced balance of \$9,271 on Applicant's October 2021 credit report shows that he has been complying with the payment plan. (Items 2 – 8)

The debt alleged in SOR ¶ 1.f is a credit-card account with a delinquent balance of \$5,409 that the creditor charged off on a date not indicated in the record. Applicant established a plan to pay \$200 per month towards this debt in December 2020. He made the payments from December 2020 through February 2021. However, he missed the March through May 2021 payments due to an inadvertent debit-card issue. He reestablished the payment plan in June 2021. Although this debt is not yet resolved, the reduced balance of \$3,997 on Applicant's October 2021 credit report shows that he has been complying with the payment plan. (Items 2 – 4, 6 – 8)

SOR ¶ 1.g alleged a \$39,536 past-due balance on the mortgage loan for Applicant's former marital home located in State A. The loan became delinquent once his ex-wife stopped contributing to the monthly payments after relocating to State B following their separation. Applicant initiated action through the lender's mortgage assistance program to save the home from foreclosure, but the lender only offered him the option to make a lump-sum payment of \$8,000, which he stated he could not afford. Despite his efforts, he was unable to sell the home in time to avoid the December 2018 foreclosure. Applicant never received any statements or other information from the lender following the foreclosure. In June 2019, the house sold at auction for an amount Applicant believed exceeded the amount he owed on the loan at the time of the foreclosure. In response to the SOR, Applicant contacted the lender who advised that there was a \$0 balance outstanding on the loan account and provided a December 2020 statement corroborating same. Applicant disputed the account with the credit bureau agencies. In January 2021, one of the agencies confirmed the account but reported it as closed with a \$0 balance. Applicant's October 2021 credit report also showed a \$0 balance on the loan account. This debt has been resolved. (Items 2 – 4, 6 – 8)

Applicant attributed his delinquent debts to the tumultuous period in his life between about 2017 and 2019, when he and his ex-wife were separated and divorcing. Their divorce proceedings were complicated by the fact that they were held in his wife's new state of residence (State B) while Applicant remained in State A, by a protracted custody battle, and by their strained relationship. The financial impact of this period included litigation-related fees (including for his own attorney and a *guardian ad litem* he hired to represent his children's interests), travel costs, court-ordered child and spousal support, and employment income loss. Applicant stopped working between July and October 2017 due to the impact the divorce was having on his ability to focus at work. (Items 2 – 4)

Applicant's employment income was \$151,600 annually as of December 2019. He paid \$1,650 per month for child support from November 2017 through June 2019. His child support order ended after he was awarded primary residential custody of the children. He does not receive any child support from his ex-wife. He has paid \$1,000 per month for spousal support since June 2017, and \$1,084 per month since June 2019. Applicant's recent credit report revealed no new delinquent debts. (Items 2 – 4, 6)

Policies

"[N]o 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." (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead,

recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. (*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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). "[S]ecurity clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The concern under this guideline 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

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

The record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 made meaningful progress in addressing the delinquent debts alleged in the SOR. He resolved the debts alleged in SOR ¶¶ 1.a and 1.b, and has consistently made monthly payments to resolve those alleged in SOR ¶¶ 1.d through 1.f. He established a reasonable basis to dispute the debt alleged in SOR ¶ 1.g, and took action to resolve the issue. His recent credit report demonstrates that he lives within his means, is managing his current finances responsibly, and has not incurred any new delinquent debts.

I considered that Applicant did not resolve the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.f until after the date the SOR was issued, and has not yet resolved the debt alleged in SOR ¶ 1.c. However, the record establishes that he acted responsibly to address his indebtedness in light of circumstances surrounding his separation and divorce that were beyond his control. Moreover, the actions he took, both before and after the SOR was issued, demonstrate a track record of responsible action that leads me to conclude that he will follow through with his plans to resolve his remaining delinquent debts.

The AGs do not require an applicant to immediately resolve or pay each and every debt alleged in the SOR, or to be debt free. Applicant has implemented a plan to resolve his financial problems and he has made substantial progress implementing his plan. Given the responsible manner in which Applicant has addressed his delinquent debts, I conclude that his finances are under control, unlikely to recur, and no longer cast doubt about his reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply to mitigate the Guideline F concerns.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge