



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



In the matter of:)
)
) ISCR Case No. 21-00001
)
Applicant for Security Clearance)

Appearances

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

03/18/2022

Decision

RIVERA, Juan J., Administrative Judge:

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

Statement of the Case

On May 13, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on June 1, 2021, and requested a hearing before an administrative judge. The case was assigned to me on November 2, 2021. The hearing was convened on March 16, 2022. Government Exhibits (GE) 1, and 3 through 6 were admitted into the record without objection. GE 2 was not admitted after Applicant objected. GE 6, the Government’s Discovery Letter, was marked and made part of the record, but it is not substantive evidence. Applicant Exhibits 1 through 3, were admitted into the record without objection. I kept the record open until April 1, 2022, to allow him additional time to supplement the record. He submitted no additional documentary evidence. Applicant testified, as reflected in the transcript received on March 28, 2022.

Procedural Issue

At his hearing, Applicant objected to the admissibility of a summary of his October 1, 2019 interview with an Office of Personnel Management (OPM) investigator, which was part of the background investigation report. (Tr. 14-15) He did not adopt the interview and the Government presented no authenticating witness. The objection was sustained. The document was marked and made part of the record, but it was not considered as substantive evidence. (See DOD Directive 5220.6, Enclosure 3, para. E3.1.20)

Findings of Fact

Applicant is 32 years old. He graduated from high school in 2007. He attended college between August and December 2007, between January and October 2014, and again from 2011 to 2021, but did not receive a degree. He stated that he completed winter and summer sessions in 2021. He is working on a bachelor's degree in cybersecurity management and policy. Applicant married in May 2019, and he has two sons. (Tr. 5-7)

Applicant's work history shows he was unemployed for seven months in 2006, and worked for two private companies between July 2006 and February 2008. He then enlisted in the Navy, where he served honorably on active duty between February 2008 and September 2010. Apparently, he was discharged for failure to meet physical fitness standards. (Tr. 8) While in the service, he received access to classified information. His eligibility for access to classified information was carried over into his civilian job positions.

After his discharge, Applicant was unemployed between September 2010 and January 2011. He has worked for about eight different federal contractors from January 2011 to present. According to his 2019 SCA and testimony, except for a three-month period of unemployment between June and September 2016, he has been continuously employed by federal contractors since January 2011. He was hired by his current employer and clearance sponsor in March 2020. He is making about \$95,000 a year. In addition, he has a part-time job as a bartender, making about \$500 monthly. His wife is employed with a state agency and makes about \$40,000 yearly.

Applicant submitted his most recent security clearance application (SCA) on September 3, 2019, seeking the continuation of his clearance eligibility required for his job. In response to Section 20C (Foreign Travel), he disclosed that he and his wife traveled to Jamaica for five days during their honeymoon in June 2019.

In his answers to Section 26 (Financial Record) of his 2019 SCA, Applicant disclosed he was "currently working on any financial debts that I have on my own in order to purchase a home for my family within the next three years." He disclosed the delinquent car loan alleged in SOR ¶ 1.a (repossessed in 2018, and still owing \$7,525). He disclosed no additional financial problems or delinquent accounts. Applicant failed to disclose the charged-off car loan alleged in SOR ¶ 1.b (repossessed in 2010, and still owing \$7,000); the six student loans alleged in SOR ¶¶ 1.c through 1.h (owing \$22,371); and the five accounts in collection alleged in SOR ¶¶ 1.i through 1.m (owing \$4,524). He admitted all of the SOR allegations with clarifications.

Applicant explained that his financial problems were the result of his youth, immaturity, and lack of understanding about his financial affairs. He believes that his appearance at his hearing shows that he cares and that he has a clear understanding of his financial shortcomings. He believes that he has been doing the things that he needs to do to fix his financial issues. He noted that he wants to pay off his delinquent debts, to make good faith [efforts] to pay them, and to show the Government that he can be trusted. He stated he is not a threat to the Government. (Tr. 17-18)

The status of the SOR allegations follows:

SOR ¶ 1.a (\$7,525) concerns a car Applicant co-signed for his then girlfriend, now his wife, in 2015. He testified he had some financial problems and was behind on the payments when the car developed engine trouble and he surrendered the car to the creditor in 2018. After that, he did not make any more payments, except for one in 2018. He failed to present documentary evidence to substantiate his claims of contacts with the creditor or of any payments made.

After his hearing, in March 2022, Applicant contacted the creditor and settled the debt for \$4,130. He promised to make 12 monthly payments of about \$344 to pay off the debt. He presented no documentary evidence of any payments made.

SOR ¶ 1.b (\$7,000) alleges a charged-off car loan. Applicant purchased the car when he was in the Navy in 2009. After he was administratively discharged for failure to meet fitness standards in 2010, he was unemployed for about five months, could not make the car payments, and the car was repossessed. He presented no documentary evidence of any contacts with the creditor or of any payments made since 2010. He believes he is no longer financially responsible for the debt because it was dropped from his credit report. This debt is unresolved.

SOR ¶¶ 1.c through 1.h alleged six student loans in collection, totaling \$22,371. Applicant claimed he had been in contact with the Department of Education (DOE) to have the loans deferred because he was attending college, but decided to establish a monthly payment arrangement. He presented no documentary evidence of his contacts with the DOE, or of any payment arrangements made.

I note that Applicant's student loans are currently in forbearance. In April 2022, the DOE extended the student loan payment pause through August 31, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments, a 0% interest rate, and stopped collections on defaulted loans. The Federal Student Aid began accepting and reviewing applications from borrowers seeking loan forgiveness under the Public Service Loan Forgiveness (PSLF) Program in the fall of 2017. Applicant presented no evidence to show that he had applied for student loan forgiveness; however, because of the forbearance, I find the student loans allegations for Applicant.

SOR ¶ 1.i (\$1,502) alleges a delinquent lease in collection. Applicant explained he broke the lease to move to a more affordable apartment. He claimed he subsequently settled and paid the delinquent account. He presented no documentary evidence of any

contacts with the creditor, of any payments made toward this debt after he broke the lease, or of other efforts to resolve the debt. (Tr. 25-26)

SOR ¶¶ 1.j (\$584), 1.k (\$500), 1.l (\$207), and 1.m (\$1,731) allege delinquent accounts in collection. Applicant claimed he paid off these delinquent accounts. He presented no documentary evidence of any contacts with the creditors, of any payments made toward these debts, or of other efforts to resolve the debts. (Tr. 26-28) I allowed him additional time after his hearing to supplement the record with documentary evidence to corroborate his claims. He failed to submit any additional documentary evidence. (Tr. 27-28)

Applicant presented no evidence to show that circumstances beyond his control prevented him from addressing his SOR debts. I considered that he was unemployed seven months in 2006, five months in 2010-2011, and three months in 2016. He failed to explain how these periods of unemployment or underemployment adversely affected his ability to pay his financial obligations. After he was hired by his current employer in 2020, Applicant has been making around \$95,000 a year.

Applicant believes he has done his best to reestablish himself financially and to pay off his delinquent debts. He believes that his financial situation is good. Except for the delinquent SOR debts, he is current in his recent financial obligations.

Applicant presented no documentary evidence of any contacts with creditors, of any settlements made, of payment agreements established, or of any payments made before or after the SOR was issued, except for the settlement with the account alleged in SOR ¶ 1.a. He presented no evidence showing that he has participated in any recent financial counseling. He claimed he is following a budget, but presented no documentary evidence of his working budget.

Applicant stated that he understands what he needs to do to get his financial problems corrected and to establish his financial responsibility. Applicant expressed his desire to resolve his financial problems. He now understands the seriousness of having negative information on his credit. He promised to resolve the remaining delinquent debts in the near future.

Policies

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

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The

U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

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

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

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's financial history includes two charged-off car loans after repossession, six student loans in collection, and five delinquent consumer accounts. After his hearing, Applicant negotiated a settlement and payment agreement with the creditor of the account alleged in SOR ¶ 1.a. He presented no evidence of any payments made pursuant to the settlement agreement. He claimed he paid the accounts alleged in SOR ¶¶ 1.i through 1.m, but failed to submit evidence to corroborate his claims. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not applicable because Applicant has unresolved ongoing debts that have been delinquent for many years. Applicant did not claim circumstances beyond his control prevented him from addressing his delinquent debts. I considered his periods of unemployment and underemployment. His unemployment in 2010-2011 resulted from his discharge from the Navy for his failure to meet physical fitness standards. He had control over his physical fitness and I cannot consider his discharge a circumstance beyond his control. While I could accept that Applicant's financial problems may have been aggravated by circumstances beyond his control, his evidence is insufficient to show that he was financially responsible under his circumstances.

Applicant has been working for federal contractors since at least 2011. He has been earning about \$95,000 a year since 2020, with an additional \$500 a month from a part-time job, and his wife is making \$40,000 a year. Applicant presented little documentary evidence of efforts to contact his creditors, of payments made, settlements agreements, or payment plans established before or after he received the SOR in May 2021. Only SOR ¶ 1.a was settled after the SOR was issued. Applicant claimed he paid SOR ¶¶ 1.j (\$584), 1.k (\$500), 1.l (\$207), and 1.m (\$1,731). He presented no documentary evidence of any contacts with the creditors, of any payments made toward these debts, or of other efforts to resolve the debts.

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

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant, 32, received credit for his service in the Navy. He has been working for federal contractors since at least 2011, while possessing eligibility for a clearance. He started the process to pay or resolve his delinquent accounts alleged in the SOR after receipt of the SOR. He has made a good start to establish his future financial responsibility. Notwithstanding, financial considerations security concerns are not mitigated at this time. He should have been more diligent addressing and resolving his delinquent accounts. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Applicant did not provide documentation about why he was unable to make greater documented progress sooner to resolve the SOR debts. He did not provide persuasive documentary evidence showing he made specific and reasonable offers to settle the SOR debts. His lack of documented responsible financial action in regard to these SOR debts for the last 10 years raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

With more effort towards documented resolution of his past-due debt, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

| | |
|---------------------------|-------------------|
| Paragraph 1, Guideline F: | Against Applicant |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraphs 1.c-1.h: | For Applicant |
| Subparagraphs 1.i-1.m: | Against Applicant |

Conclusion

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

JUAN J. RIVERA
Administrative Judge