



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-00272
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2022

Decision

RIVERA, Juan J., Administrative Judge:

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

Statement of the Case

On September 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, personal conduct, and F, financial considerations. Applicant responded to the SOR on October 18, 2021, and requested a hearing before an administrative judge. On February 11, 2022, Applicant requested an expedited hearing. The case was assigned to me on February 15, 2022. The hearing was convened on February 23, 2022. Government Exhibits (GE) 1 through 7 were admitted into the record without objection. GE 7, 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. AE 3 was received post-hearing. Applicant testified, as reflected in the transcript received on March 2, 2022.

Procedural Issue

At his hearing, Applicant stated the he had sufficient time to prepare for his hearing and was ready to proceed. He affirmatively waived his right to 15-day advance notice of his hearing. (Tr. 16-17)

As of his hearing date, Applicant held an industry clearance sponsorship through a federal contractor. (Hearing exhibit (HE 1)

Findings of Fact

Applicant is 49 years old. He graduated from high school in 1991 and completed an associate's degree in 1999. He has never been married, but lives with a cohabitant. He has a 15-year-old daughter for whom he provides financial support. He served in the U.S. Navy on active duty for five years between 1991 and 1995. He joined the Active Reserve in 1999 and served until 2002. He was honorably discharged from both enlistments. While in the service, he received eligibility to access to classified information at the top-secret level. He testified that his clearance was transitioned to his civilian positions and that it was continued until about 2017-2018.

Applicant work history shows he worked for four different federal contractors between June 2008 and February 2016. He disclosed on his May 20, 2020 security clearance application (SCA) that he was terminated from his job in February 2016, because of insubordination and "conduct detrimental due to miscommunication with the company's CEO". He was hired by another federal contractor in February 2016, and has since then worked for five different federal contractors. He was hired by his current employer and security sponsor, a large federal contractor, in December 2021. His employment is conditioned on him receiving access to classified information. He is earning about \$133,000 a year. He worked for his prior employer between July 2019 and September 2021. He was unemployed in between contracts.

Applicant has had short periods of unemployment, the result of being in between contracts. Except for these short periods of unemployment, Applicant has been continuously working for federal contractors since 2008.

Applicant submitted his most recent security clearance application (SCA) on May 20, 2020, seeking the continuation of his clearance eligibility required for his job. In his answers to Section 26 (Financial Record) of his 2020 SCA, he disclosed he was delinquent in two accounts including the car loan alleged in SOR ¶ 2.a (surrendered in 2004, and owing \$23,651); and the state's child support enforcement agency account alleged in SOR ¶ 2.c (\$15,462 in arrearages). In his 2020 SCA, He stated he was only \$9,000 delinquent. He failed to disclose in his 2020 SCA any of the other seven delinquent accounts alleged in the SOR.

Applicant explained that his financial problems were the result of periods of unemployment and underemployment. He works for federal contractors, and he is subject to layoffs when the contracts end or his employers fail to renew the contract. He claimed

he had been in contact with his creditors trying to establish payment agreements or to settle the accounts. He failed to present documentary evidence to substantiate his claim.

Under Guideline E, the SOR alleges that Applicant was terminated from his employment with a federal contractor (K) in 2016 for insubordination, legal and physical threats, a hostile work behavior, and noncompliance with customer practices. (SOR ¶ 1.a) Applicant admitted he was terminated from the company. At his hearing, he claimed that he submitted a leave form and left for another state to visit his family. The leave form was not received by his employer. His customers complained, his employer called him, they had a heated conversation, and he was fired. Applicant expressed remorse for his behavior and losing the job after working for the company during three years.

I note that in September 2020, Applicant told an OPM investigator that he was working with employer K during the day and employer G at night. When employer K found out about it, he was fired. (GE 4)

SOR ¶ 1.b alleged Applicant was terminated from his employment with a federal contractor (G) in 2017, after the customer he was supporting asked for his removal from the contract. Applicant admitted he was removed from the contract, but denied he was terminated. He believed that his employer was looking for another contract where he could be placed. He claimed he was never told he was terminated. He resigned his position and went to work for another contractor within two weeks of his removal. (Tr. 21-22) G's letter to Applicant, dated March 6, 2017, stated that the purpose of the letter was to inform him that he was being terminated, effective March 20, 2017. (GE 2)

Under Guideline F, the SOR alleged nine delinquent debts, totaling about \$88,420, which include three charged-off consumer credit accounts. (SOR ¶¶ 2.a, 2.b, and 2.d) The first two are defaulted auto loans, and the third is a delinquent credit card account. The remaining six accounts are all consumer, medical, or credit accounts in collection. (SOR ¶¶ 2.c, and 2.e through 2.i) Applicant admitted all of the SOR allegations with clarifications.

The status of the financial SOR allegations follows:

SOR ¶ 2.a (\$29,128) concerns a defaulted car loan from 2004. Applicant claimed he was unable to make the loan payments after his contract ended and he was laid off. He has made no payment since 2004. He claimed he attempted to contact the creditor or the subsequent collection agencies to arrange for payments, but the account had been transferred, and then "mysteriously" dropped from his credit report. He failed to present documentary evidence to substantiate his claim of attempted contacts with the creditor or subsequent collection companies.

SOR ¶ 2.b (\$23,651) alleges a defaulted car loan from 2016. Applicant purchased the car in 2014-2015. He was unable to make the car payments after he was terminated, and the car was repossessed. He has made no payments since 2016. He claimed he intends to work out a settlement agreement with the creditor. This debt is unresolved.

SOR ¶ 2.c (\$15,462) alleges a delinquent child-support obligation in arrears. Applicant admitted the allegation. The family court ordered Applicant to pay \$1,000 in monthly child support when his daughter was one-year-old. He stated the account became delinquent when he was unemployed 16 months during an undisclosed period. In 2019, he agreed to a \$1,000 garnishment of wages, plus an additional \$100 a month to satisfy his arrearages. Applicant's February 2022 earnings statement shows a \$253 child support deduction from his earnings. (AE 1) He presented no other documentary evidence to show a history of consecutive child support payments.

SOR ¶ 2.d (\$5,438) alleges a charged-off credit-card account. Applicant claimed he was unable to pay the debt after he was unemployed for an extended period in 2008. He has made no payments since 2008. He claimed he intends to work out a settlement agreement with the creditor sometime in the future. This debt is unresolved.

SOR ¶ 2.e (\$1,535) alleges a delinquent account in collection. Applicant claimed he was using the creditor to make his child-support payments online. The account became delinquent when he arranged to pay his child support obligation via pay check deduction. He stated he resolved the account by talking with the state's child support agency. He presented no documentary evidence of his contacts with the creditor, the state agency, of any payments made, or of other efforts to resolve the debt.

SOR ¶ 2.f (\$769) alleges a cable services account in collection. Applicant claimed he learned about this delinquent account while checking his credit report before he received the SOR. He claimed he paid the account. He presented no documentary evidence of his contacts with the creditor, of payments made, or of other efforts to resolve the debt.

SOR ¶ 1.g (\$651) alleges a communications service provider account in collection. Applicant claimed he paid the account and reestablished his service. He presented no documentary evidence of contacts with the creditor, of any payments made, or of other efforts to resolve the debt.

SOR ¶ 1.h (\$641) alleges a medical account in collection. Applicant believes the debt is for medical services for his daughter. He believes his daughter's mother resolved the debt. He presented no evidence to show the account was paid or otherwise resolved.

SOR ¶ 1.i (\$11,145) alleges a delinquent car loan in collection. He explained he surrendered the car after losing his job in 2008 because of the financial crisis. He presented no documentary evidence of contacts with the creditor, of any payments made, or of other efforts to resolve the debt.

Applicant believes that circumstances beyond his control prevented him from addressing his SOR debts between the time they became delinquent and September 2021, when the SOR was issued. He averred that his periods of unemployment and underemployment adversely affected his ability to pay his financial obligations. Because of his low yearly income (below or about \$63,000), he was unable to recover from his

financial problems. He implied his income was insufficient to pay for his living expenses, current debts, and his delinquent debts.

Applicant believes his current financial situation is good. He was hired as a data center engineer by his current employer in December 2021. He is making around \$133,000 a year, twice as much as he was making with his prior employer. Additionally, his employer offered him a bonus of up to \$45,000 a year, provided he receives eligibility for access to classified information at certain levels. (AE 2) He promised to pay off his remaining delinquent accounts when he receives his bonus. Although he has been employed with his current employer since December 2021, he presented no evidence of any payments made to any of the SOR creditors, except for the child support payments deducted from his pay check.

Applicant's recent credit report shows a change in delinquent debt from \$88,000 to \$34,000, primarily because some debts have fallen off his credit report for being seven years old. He argued that the accounts are resolved and this shows his credit payment history is getting better. He 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. He presented no evidence showing that he has participated in any recent financial counseling, although, he claimed he received financial counseling while he was in the Navy. After the hearing, he submitted a budget that he claimed he is following to correct his financial problems. (AE 3)

Applicant expressed hope that his new job and anticipated bonus would allow him to get his financial problems corrected and to establish his financial responsibility. He does not understand the seriousness of having negative information on his credit or what it takes to establish financial responsibility.

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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(e) personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct

includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . .

Applicant was terminated by employer K because he was working for both employer K and G (another government contractor) at the same time. I have considered all the evidence, including Applicant's age, education and background, his admissions to the background investigator in 2020, and G's letter to Applicant indicating he was being terminated. AG ¶ 16(a) is applicable to SOR ¶¶ 1.a and 1.b.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant admitted that he was terminated by K in his 2020 SCA, and he provided an explanation consistent with prior statements he made to OPM investigators in 2020. He believed that G did not terminate him, but merely removed him from the contract. Considering the passage of time, Applicant's discussions with an OPM investigator, his disclosures in the 2020 SCA, and at his hearing, I find SOR ¶¶ 1.a and 1.b mitigated under the five personal conduct mitigating conditions above.

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.

The SOR alleges, Applicant admitted, and the evidence corroborates he has nine delinquent debts, totaling about \$88,420, which include three charged-off consumer credit accounts (SOR ¶¶ 2.a, 2.b, and 2.d); and six accounts in collection. (SOR ¶¶ 2.c, and 2.e through 2.i). 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. Applicant's evidence is insufficient to show he has resolved any of the SOR allegations. These are ongoing debts that have been delinquent for many years. Applicant claimed circumstances beyond his control prevented him from addressing his delinquent debts, i.e., periods of unemployment and underemployment in between jobs.

While I 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 2008. He knew or should have known of the periods of unemployment or underemployment in between contracts and should have anticipated and planned for such occasions. He submitted no documentary evidence to show his emergency or contingency plans in the event of future underemployment and unemployment. Moreover, I find that his terminations in 2016 and 2017 were due to his own misconduct. As such, his terminations cannot be considered as a circumstances beyond his control.

Applicant's 2020 SCA does not indicate unemployment periods beyond a couple weeks or months in between contracts or jobs. Except for those periods of unemployment, Applicant has been fully employed by federal contractors since 2008.

Applicant presented no 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 September 2021. 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. All 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 serious 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 Guidelines E and F in my whole-person analysis.

Applicant, 49, served five years on active duty in the Navy and four years in the Active Reserve. He has been working for federal contractors since at least 2008, while possessing eligibility for a clearance. He acquired nine accounts that became delinquent and have been delinquent for many years. He submitted no documentary evidence of his efforts to resolve any of the delinquent accounts. He failed to establish his financial responsibility. Financial considerations security concerns are not mitigated. He should have been more diligent addressing and resolving his delinquent accounts. The record evidence leaves me with serious 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 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)).

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 E:	For Applicant
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 2.a - 2.i:	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