



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



In the matter of:)	
)	
)	ISCR Case No. 20-03197
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

July 6, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On November 20, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On December 10, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 13, 2021, Applicant submitted his Answer to the SOR.

On June 4, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 4, 2021, DOHA issued a notice of hearing scheduling the hearing for June 29, 2021. I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 through 5 without objection, and admitted Applicant

Exhibits (AE) A and B without objection. Applicant testified and did not call any witnesses to testify on his behalf. I held the record open until August 31, 2021, and extended that deadline to September 17, 2021, to afford Applicant an opportunity to submit additional evidence. Post-hearing, I admitted AE C through I without objection. On July 12, 2021, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 31-year-old senior composite fabricator, who has been employed by a defense contractor since January 2020. He seeks a secret security clearance, which is a requirement of his continued employment. (Tr. 10-13, 38; GE 1)

Applicant graduated from high school in 2009. He completed one college level course in 2010. Applicant has never married, and has two minor children with two different mothers. (Tr. 12-14; GE 1) He pays \$500 monthly in child support for each child. These amounts are deducted from his wages and forwarded directly to each child's mother. (Tr. 14-17, 25) Applicant's annual salary is \$75,000. (Tr. 17)

Financial Considerations

Applicant's SOR lists six allegations under this concern. The allegations are established by his November 20, 2019 SF-86; his January 29, 2020 Office of Personnel Management Personal Subject Interview (OPM PSI); his December 19, 2019, March 20, 2020, and May 26, 2021 credit reports; and his January 13, 2021 SOR Answer. (GE 1 through 5; SOR Answer)

Applicant stated that his financial difficulties, "all started when I separated from my second son's mom." This occurred in "early 2019." (Tr. 18) Applicant explained that he had purchased a 2018 Chevrolet Silverado truck in his name for his then live-in girlfriend and after they broke up, she was unable to make the payments. Applicant contacted the creditor and arranged for a voluntary repossession. (Tr. 19-21) The creditor sold the truck at auction and after the truck was sold, there was an \$11,829 deficiency balance, discussed *infra*. (Tr. 21)

The following is a summary of Applicant's six SOR allegations and their status:

SOR ¶ 1.a – **Charged-off account in the amount of \$11,829 for deficiency balance after truck was voluntarily repossessed and auctioned off (see discussion *supra*).** Applicant contacted creditor in January 2021 and settled account for \$6,000, agreeing to make 12 monthly \$500 payments (by direct debit) beginning in January 2021. (Tr. 21-24; AE A, AE C) **DEBT BEING RESOLVED.**

SOR ¶ 1.b – **Collection account for cell phone in the amount of \$3,095.** This is a cell phone bill for Applicant's former girlfriend dating back to approximately 2019.

Applicant contacted creditor and settled and paid this account in July 2021 for the lesser amount of \$1,400. (Tr. 25-27; AE D) **DEBT RESOLVED.**

SOR ¶ 1.c – **Charged-off home security system in the amount of \$1,556 purchased in approximately 2019.** Applicant contacted creditor and settled and paid this account in August 2021 for the lesser amount of \$779. (Tr. 26-28; AE E) **DEBT RESOLVED.**

SOR ¶ 1.d – **Collection account for cell phone in the amount of \$862.** Applicant contacted creditor and settled and paid this account in August 2021 for the lesser amount of \$500. (Tr. 28-29; AE F) **DEBT RESOLVED.**

SOR ¶ 1.e – **Past-due account for home security system in the amount of \$347 with a total balance of \$398.** Applicant stopped paying this account in 2019 when he separated from his former girlfriend. Applicant contacted creditor and settled and paid this account in July 2021 for the lesser amount of \$300. (Tr. 29; AE H) **DEBT RESOLVED.**

SOR ¶ 1.f – **Collection account- for cell phone in the amount \$524.** Applicant stated that this “one was identity theft.” Applicant contacted creditor and paid this account in August 2021 for the lesser amount of \$220. (Tr. 29-30; AE I) **DEBT RESOLVED.**

During cross-examination, Department Counsel identified two non-alleged debts that appeared on Applicant’s May 26, 2021 credit report: (1) an outstanding medical/health care past-due debt in the amount of \$840, and (2) a past-due payday loan in the amount of \$300. (Tr. 39-41; GE 2). Applicant contacted the medical/health creditor in August 2021 and set up an 11-month payment plan at \$71 a month by direct debit. (AE G, AE I) DEBT BEING RESOLVED. Applicant contacted the payday loan creditor in July 2021 and paid this account in full. (AE I) DEBT RESOLVED.

When asked whether he had sought financial counseling, Applicant responded, “Yes and no,” adding that he had discussed his financial situation with a credit specialist in an attempt to repair his credit. When Applicant first started working for his current employer, he retained the services of a credit specialist to assist him in regaining financial stability. However, he was unable to afford the approximate “\$100 monthly” costs of this service given his income and expenses, particularly his child support payments and monthly mortgage. (Tr. 24, 33-34, 41-42)

During his hearing, Applicant discussed his assets and expenses. He stated that his monthly take home pay is \$2,880. He broke down his monthly expenses as follows: (1) mortgage \$1,520; (2) electricity approximately \$100; (3) water bill approximately \$115; (4) car payment \$740; (5) car insurance consistent with other costs \$165; (6) gasoline approximately \$260; and (5) groceries approximately \$400. After paying all of his other miscellaneous bills, he stated his net monthly remainder is, “[r]eally, to be honest, nothing.” (Tr. 30-33) With his current employer, Applicant is able to have “predictable” overtime. (Tr. 34-35)

Applicant stated that he is “very serious” about taking the necessary steps to qualify for a security clearance. To that end, he has consulted with a realtor and during his hearing provided the realtor’s name and contact information. He is prepared to sell his house “to pay off all my debt to get my clearance.” His house is appraised at “\$345,000 to \$360,000” and he owes “about \$202,000 to \$205,000” on his mortgage. (Tr. 35-36; AE B) Applicant’s salary has increased since he began working for his current employer and he has “approximately \$5,000” in his savings account as a result of a recent income tax refund. (Tr. 39, 43)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides two 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.” The evidence of record establishes security concerns under AG ¶¶ 19(a) and 19(c). Further review is necessary.

AG ¶ 20 lists five potentially applicable mitigating conditions:

(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.

The Appeal Board concisely 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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). AG ¶ 20(e) is not applicable. Although Applicant stated the debt is SOR ¶ 1.f was the result of identity theft, he apparently chose to pay off the debt rather than dispute it.

AG ¶¶ 20(b) and 20(d) are fully applicable and 20(c) is partially applicable. Applicant's financial situation deteriorated significantly in approximately 2019 when he separated from his former girlfriend and mother of his second child. His SOR debts in large part stem from this breakup. In addition to the SOR debts, he is required to pay \$500 in monthly child support to the mother of his second child in addition to the \$500 he is paying to the mother of his first child. As noted *supra*, Applicant has limited disposable income. That said, he contacted the creditor in SOR ¶ 1.a (charged-off

deficiency balance of \$11,829 for girlfriend's truck) and set up a payment plan. Post-hearing, he contacted all of his creditors and paid off or settled all of his remaining SOR debts, as well as the two non-SOR debts Department Counsel identified during cross-examination.

Shortly after Applicant began working for his current employer in January 2020, he recognized that his finances were out of control and contacted a credit specialist. However, he was unable to afford the \$100 monthly fee charged by the credit specialist given his income and expenses. It is unclear from Applicant's post-hearing documents whether he sold his house to generate the money to pay off his creditors or whether he used the \$5,000 he had in savings or was able to generate more income by working overtime. Regardless, he knew that regaining financial responsibility was essential to qualify for a security clearance and took reasonable steps to resolve his debts.

Applicant entered into payment plans for the truck deficiency account in SOR ¶ 1.a as well as the non-alleged medical debt Department Counsel identified during cross-examination. Given the financial resources available to the Applicant, it appears that he did his level best to pay off the creditors when he could. The Appeal Board has established the following basic guidance for adjudications in cases such as this:

an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations 32) and quotations omitted).

When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be reasonable. He set up payment plans to pay off two of his larger debts and settled and/or paid his remaining debts. If the pay-off forecasts provided by the two creditors are accurate, Applicant should be debt-free by the time this decision is published.

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(a):

(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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. To review, Applicant is a 31-year-old senior composite fabricator, who has been employed by a defense contractor since January 2020. At a relatively young age, he found himself responsible for paying \$1,000 in monthly child support for two minor children with two different mothers. He broke up with the mother of his second child in 2019, at a time when he could ill afford to take on any additional debt. He accepted responsibility for those debts. I was impressed with his demeanor and willingness to go so far as to sell his house to generate the funds to pay off his creditors. It is unclear whether that is what happened, but suffice it to say Applicant utilized his post-hearing time to live up to his word to regain financial responsibility.

This experience has not been lost on Applicant. He has a job that will provide him with upward mobility and an income level to maintain a reasonable living standard. He understands what he needs to do to maintain financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt repayment.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.f: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is granted.

ROBERT TUIDER
Administrative Judge