



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



In the matter of:)
)
) ISCR Case No. 21-00874
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to provide corroborating documentary evidence of his history of payments to address several debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 22, 2020, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3). On June 14, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Item 1)

The SOR detailed reasons why the CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (Item 1)

On June 13, 2021, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 2; File of Relevant Material (FORM) at 1) On September 25, 2021, Department Counsel completed a FORM. On October 12, 2021, Applicant received the FORM. Applicant did not respond to the FORM. On April 12, 2022, the case was assigned to me.

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

Findings of Fact

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

Applicant is a 38-year-old security officer who has worked for a defense contractor since February 2020. (Item 3 at 7, 11-12) From July 2019 to February 2020, he was employed as an appliance technician. (*Id.* at 12) From November 2018 to July 2019, he was employed in loss prevention for a department store. (*Id.* at 13-14) From July 2018 to November 2018, he was unemployed. (*Id.* at 14-15) From June 2006 to July 2018, he was employed as a corrections officer. (*Id.* at 15) He served in the Army National Guard from January 2001 to July 2007, and he received an honorable discharge. (*Id.* at 17)

Applicant married in 2011, and he does not have any children. (Item 3 at 20-21) In 2012, he said he received a bachelor's degree. (Items 3, 9) The record contains a diploma for attendance at a university from 2011 to 2013 with an associate's degree in information technology and networking awarded in 2013. (Item 8) There is no evidence of involvement with illegal drugs, security violations, abuse of alcohol, or criminal conduct. (*Id.* at 28-31)

Financial Considerations

Applicant did not disclose any debts placed for collection or charged off in the previous seven years on his March 22, 2020 SCA. (Item 1) On April 23, 2020, an Office of Personnel Management (OPM) investigator interviewed Applicant about his delinquent debts. (Item 9) He was confronted with the negative financial information on his credit report, including the SOR debts in collection or charged off, and he admitted his student loans were in collections. (*Id.* at 1-2) Applicant told the OPM investigator that the collection agent for his federal student loans contacted him in 2018, and he entered into a \$5 monthly rehabilitation agreement. (*Id.*) Applicant said that he paid the account on time after completion of the rehabilitation agreement. (*Id.* at 2) He said the debt in SOR ¶ 1.m is in good standing; he denied that he owed the insurance debt in SOR ¶ 1.n; and he was unaware of the debt in SOR ¶ 1.o. (*Id.* at 2-3) Later in his OPM interview, he said the creditor for the debt in SOR ¶ 1.o was the university which refused to give him his diploma for his bachelor's degree until he paid the debt. (*Id.* at 5) The OPM investigator gave Applicant an "opportunity to provide additional documentation regarding financial delinquencies;" however, he "failed to provide during the interview or subsequent to the

interview [documents] to corroborate [his] disagreement with accounts on the Credit Bureau Report.” (*Id.* at 3)

In March 2020, as a result of the COVID-19 pandemic, the Department of Education (DE) placed federal student loans in forbearance. On December 22, 2021, the DE extended the student loan payment pause through May 1, 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. See Federal Student Aid website, <https://studentaid.gov/announcements-events/covid-19>.

Applicant’s April 9, 2020 credit report shows the 12 student loans in the collections section. (Item 5 at 8-11) They were assigned to collections on the following dates: ¶ 1.a \$6,995 (December 2015); ¶ 1.b for \$5,200 (May 2014); ¶ 1.c for \$5,150 (December 2015); ¶ 1.d for \$4,213 (April 2012); ¶ 1.e for \$3,277 (July 2011); ¶ 1.f for \$2,114 (March 2017); ¶ 1.g for \$2,063 (May 2014); ¶ 1.h for \$1,986 (July 2011); ¶ 1.i for \$1,063 (December 2012); ¶ 1.j for \$977 (December 2012); ¶ 1.k for \$822 (March 2017); and ¶ 1.l for \$542 (April 2012). (*Id.*) They are all shown as closed and assigned to the government. (*Id.*)

On February 10, 2021, Applicant responded to DOD CAF interrogatories and said the 12 federal student loans were paid, and then he checked the block indicating payment arrangement have been made. (Item 4 at 3-6) The DOHA interrogatory instructions ask for proof of making payments and documentation of payment arrangements. (*Id.* at 2) It also includes examples of acceptable documentation, such as copies of cancelled checks, bank statements, correspondence from the creditor, a record of payment arrangements including payment history, and a credit report showing the account is paid, settled in full, or being paid as agreed. (*Id.* at 7) He attached an incomplete personal financial statement, and a pay statement from his employment for November 2020. (*Id.* at 10-11)

Applicant’s February 24, 2021 credit report shows the 12 student loans in collections. (Item 6 at 2-4) The debts were reported as being in collections in October 2020. (*Id.*) This credit report also reflects that in January 2021, his 12 student loans were reported as \$0 past due and in pays as agreed status. (*Id.* at 7-9)

The June 14, 2021 SOR alleges 12 federal student loans placed for collection as follows: ¶ 1.a for \$6,995; ¶ 1.b for \$5,201; ¶ 1.c for \$5,151; ¶ 1.d for \$4,213; ¶ 1.e for \$3,278; ¶ 1.f for \$2,114; ¶ 1.g for \$2,063; ¶ 1.h for \$1,986; ¶ 1.i for \$1,063; ¶ 1.j for \$978; ¶ 1.k for \$822; and ¶ 1.l for \$542. (Item 1) The SOR alleges three additional delinquent debts as follows: ¶ 1.m is a charged-off bank debt for \$409; ¶ 1.n is an insurance debt placed for collection for \$162; and ¶ 1.o is a charged-off private education debt for \$2,874.

Applicant’s July 13, 2021 SOR response states, “I have worked with a Student Loan company to make my payments manageable and they are in good standing.” (Item 2 at 4) He provided a July 11, 2021 credit report which indicated his \$34,406 in student loans were a “closed account” and not listed as collection accounts. (*Id.* at 5-7) He said he paid the debt in SOR ¶ 1.n (\$162) two years ago, and it is not on his current credit report. (*Id.* at 4) He said he is working on paying the debts in SOR ¶ 1.m (\$409) and ¶ 1.o

(\$2,874). He did not provide copies of any documents he sent to the creditors or received from the creditors. He did not provide copies of bank statements or other documents showing payments to the SOR creditors. He did not provide a history of his student loan payments.

Applicant's September 24, 2021 credit report shows the 12 student loans in the collections section with the most recent activity being in December 2017 with a \$5 scheduled payment and their status as being transferred. (Item 7 at 9-11) It also shows the accounts in pays as agreed status, payments from October 2020 to present, and a \$0 past due balance. (*Id.* at 3-7)

The FORM credited Applicant with bringing his student loans to current status, but indicated his history of handling his student loans, including not resuming payments until October 2020, warranted denial of his security clearance. (FORM at 4) The FORM described Applicant's security-significant behavior and noted the absence of corroborating documentation of mitigation. The FORM informed Applicant that he had 30 days from the receipt of the FORM in which **"to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. . . . If [Applicant does] not file any objections or submit any additional information . . . [his] case will be assigned to an Administrative Judge for a determination based solely"** on the evidence set forth in this FORM. (FORM at 4-5 (emphasis added)) Applicant did not provide a response to the FORM.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

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

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

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

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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

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

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

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

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

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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

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

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

Applicant experienced underemployment and unemployment which were circumstances beyond his control, and they adversely affected his finances. However, "[e]ven if applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the judge could still consider whether applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

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

Applicant is credited with paying the insurance debt in SOR ¶ 1.n for \$162. He said he paid it two years ago, and it is not on his current credit report.

Applicant is credited with making some payments on his student loans starting in October 2020. His latest credit reports show his 12 student loans as \$0 past due and these debts are in pays as agreed status. There are residual questions about what Applicant did to bring his student loans to current status on his credit reports. See Megan

Leonhardt, "Freezing student loan payments helped boost borrowers' credit scores," Fortune, (Mar. 4, 2022), <https://fortune.com/2022/03/04/freezing-student-loan-payments-helped-boost-credit-scores/> (indicating credit reporting companies are bringing all federal student loans to current status because of Presidential orders). For purposes of this decision, I will presume he brought his 12 federal student loans to current status by making payments beginning in October 2020.

Complete reliance on the COVID-19 pandemic-based student loans deferment to establish mitigation for security clearance purposes is misplaced. Applicant's student loans were delinquent from 2013 to about 2017 or 2018, and again in 2019 and the first nine months in 2020. See ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021); ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). He did not establish he was unable to establish a payment plan and make some payments for several years before October 2020.

The SOR did not allege that Applicant failed to disclose any delinquent debts on his SCA and before being confronted during his OPM interview. The DOHA Appeal Board listed four circumstances in which conduct not alleged in an SOR may be considered as follows: "(a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept." ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022) (citing ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). The non-SOR allegations will not be considered except for the four purposes described in ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022).

On April 23, 2020 an OPM investigator questioned Applicant about his delinquent student loans. He said he had been making payments on them since 2018. He said in 2018, he made \$5 monthly loan rehabilitation payments. However, his credit report reflects that he started making payments of unspecified amounts in October 2020. His recent credit reports do not fully establish mitigation of his student loans. See ISCR Case No. 14-03612 at 3 (Aug. 25, 2015) ("Indeed, even if a credit report states that a debt has been paid, that fact alone does not, in and of itself, resolve concerns arising from the dilatory nature of an applicant's response to his debts or other circumstances that detract from an applicant's judgment and reliability. In this case, the Judge commented on the absence of detailed evidence about how Applicant addressed his finances and reasonably had doubts about his clearance eligibility based on that lack of evidence").

Applicant's history of non-payment of his federal student loan debt from 2013 to 2017 or 2018, in 2019, and the first nine months of 2020, has important security implications. The timing of his resumption of payments, after receipt of notice of the security concern during his OPM interview, suggests that he may have resumed payments to address security concerns and not because of his recognition of his financial responsibilities. See ISCR Case No. 20-01004 at 3 (App. Bd. June 28, 2021) ("Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what

they reveal about the applicant's worthiness for a clearance") (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)).

Applicant did not establish that he was unable to make more progress sooner in the resolution of his delinquent debts. He did not provide copies of established payment plans, correspondence from or to creditors, history of payments from the creditors, or evidence of payments from his bank. There is insufficient assurance that his financial problems are being resolved. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Whole-Person Concept

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

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

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 38-year-old security officer who has worked for a defense contractor since February 2020. He served in the Army National Guard from January 2001 to July 2007, and he received an honorable discharge. In 2012, he said he received a bachelor's degree, and in 2013, he received an associate's degree in information technology and networking. There is no evidence of involvement with illegal drugs, security violations, abuse of alcohol, or criminal conduct.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. He mitigated the debt in SOR ¶ 1.n.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why he was unable to make greater progress resolving several delinquent debts. He did not provide documentary evidence showing a track record of consistent payments to several SOR creditors. His financial

history raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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

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

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

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge