



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-02155
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
 For Applicant: *Pro se*
 06/08/2022

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 16, 2020. On October 28, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 16, 2021 (Answer), and requested a decision based on the written record in lieu of a hearing. On December 10, 2021, the Government sent Applicant a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 6. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on December 16,

2021, but did not respond to the FORM or object to the Government's evidence. The case was assigned to me on March 3, 2022.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. Although Item 4 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case.

Findings of Fact

Applicant, age 42, has never been married. He has two children, ages 7 and 16. He received his high school diploma in 1998. He attended an online university from 2009 through 2011, without earning a degree. He has been employed as an advanced manufacturing technician since December 2018 by a defense contractor, with whom he had been previously employed on a contract basis through another company beginning in May 2018. He was unemployed from March 2018 through May 2018, after leaving a previous employer to relocate from State A to State B. This is his first application for a security clearance. (Item 3)

The SOR alleged that Applicant failed to file his federal and state tax income tax returns for tax years 2018 and 2019. It also alleged 10 delinquent debts totaling \$23,975, including six student-loan accounts totaling \$6,950, an \$11,194 child-support account, two utility accounts totaling \$1,940, and unpaid federal taxes totaling \$3,891 for tax years 2018 and 2019. In his Answer, Applicant admitted all but one of the SOR debts. He denied the debt alleged in SOR ¶ 1.d (a \$126 utility account) on the basis that that it had been paid. Each alleged debt was confirmed by a December 2020 credit report. (Items 2, 5)

Applicant failed to file, as required, his federal and state income tax returns for tax years 2018 and 2019, as alleged in SOR ¶¶ 1.j and 1.k. He also failed to pay federal income taxes for tax years 2018 and 2019, as alleged in SOR ¶ 1.i. He attributed his failure to file to a combination of procrastination, laziness, and pandemic-related challenges in accessing his tax preparer. In his November 2020 SCA, Applicant proffered plans to file his 2018 returns with his 2019 returns. During his January 2021 security clearance interview (SCI), he proffered plans to file his 2018 through 2020 returns in February 2021. He asserted that there was zero chance that he would file late again. He also formulated the following plan to ensure that he would file timely going forward: 1) he will make a standing appointment with his tax preparer for each filing season; and 2) he will file his returns as soon as he receives his W-2 form. (Item 2; Item 3 at 33; Item 4 at 1-2; Item 6 at 9)

In his Answer, Applicant asserted that he filed his 2018 and 2019 federal and state returns in 2020. However, his IRS tax account transcripts revealed that he filed his 2018 through 2020 federal returns in May 2021. His entire 2020 federal refund (\$2,215) was applied to his child-support debt. As of June 28, 2021, he owed the IRS taxes in the amount of \$3,764 and \$127, respectively, for tax years 2018 and 2019, as alleged in SOR ¶ 1.I. In his Answer, Applicant averred that he was in the process of “filing for a repayment plan” to resolve his 2018 and 2019 federal tax debt. (Item 2; Item 5 at 13-17)

Applicant filed his 2020 state tax return sometime in or before May 2021, the exact date of which is not specified in the record. State B used his entire state tax refund of \$1,153 for tax year 2020 in May 2021 to pay outstanding tax and child-support liabilities. \$493 of the refund was applied towards his child-support debt, and the remainder was listed as an “internal offset,” with \$0 of the refund being received by Applicant. There are no documents in the record to corroborate that Applicant’s 2018 and 2019 state returns have been filed. (Item 5 at 14)

The debts alleged in SOR ¶¶ 1.a, 1.c, and 1.f through 1.i are student-loan accounts associated with the online university that Applicant attended from March 2009 until January 2011, when he stopped to focus on work and to keep food on the table. He acknowledged that he had not made payments on the loans since 2011. A December 2020 credit report reported two of the debts totaling \$2,907 (SOR ¶¶ 1.a and 1.c), as placed for collection in May 2011 by the U.S. Department of Education (USDOE); and the remaining four debts totaling \$4,043 (SOR ¶¶ 1.f through 1.i), as 120 days or more past due by Navient (two were opened in July 2009, and two in March 2010). (Item 2; Item 4 at 2, 4-5; Item 5; Item 6 at 18)

The record did not indicate whether the Navient loans are federal or private. However, Applicant claimed that Navient serviced all six loans, without providing any corroborating documentation. He maintained that, despite his efforts, he has been unable to reach the USDOE to confirm whether the debts alleged in SOR ¶¶ 1.a and 1.c are, in fact, being serviced by Navient. The Navient loans were in forbearance from March 2021 until February 2022, which he stated he applied for because he had children and had a hard time making ends meet. In his Answer, he asserted that he was “awaiting payment info after forbearance expired” on the Navient loans, and that the U.S. Department of Education “could not be reached to inquire about details” of those loans. (Item 2; Item 4 at 2, 4-5; Item 5; Item 6 at 18)

I, *sua sponte*, took administrative notice of the fact that, beginning March 13, 2020, due to the COVID-19 pandemic, the USDOE has been providing emergency relief on federal student loans, including the suspension of loan payments and collections on defaulted loans. On April 6, 2022, President Biden extended that COVID-19 relief through August 31, 2022.¹

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/06/statement-by-president-biden-extending-the-pause-on-student-loan-repayment-through-august-31st-2022/>; <https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest>

The debt alleged in SOR ¶ 1.b is a cell-phone account placed for collection by Provider A. Applicant opened the account approximately 14 years ago for two phones, one for himself and the other for his oldest child. He asserted that he was current with the account for about 11 or 12 years, until he could no longer afford the monthly payment. He attempted to return the phones to Provider A to resolve the debt. However, Provider A would not accept them due to the terms of his service contract agreement. He then tried to resolve the debt by obtaining service with a new provider, with the expectation that he would be given a credit for his two existing phones sufficient to repay the debt. However, he was not given that credit due to the age of the phones. At some point, he received a letter from a collection agent for Provider A. He claimed that he could not afford to pay the collection debt. In his SCA, he promised to resolve the debt by the end of November 2020. During his SCI, he asserted that he planned to negotiate with the collection agent in an attempt to settle for a lesser amount. In his Answer, he stated that he had “not yet set up a payment plan.” (Item 2; Item at 38; Item 4 at 4)

The debt alleged in SOR ¶ 1.d is an account placed for collection by Applicant’s former internet-service provider with whom he had service in 2017. Although he asserted that he was not delinquent on his account when he closed the account and returned his equipment in 2018, there remained a balance for unpaid fees. In his SCA, he promised to resolve the debt by the end of November 2020. During his SCI, he maintained that he was still attempting to contact the creditor to satisfy the debt in full. In his Answer, he claimed that he paid the debt, without proffering any corroborating documentation. In (Item 2; Item 3 at 37; Item 4 at 4).

The debt alleged in SOR ¶ 1.e is the arrearage amount that Applicant owes for his youngest child’s support. He claimed that he had been timely paying \$800 per month for a period between mid to late 2017. Then, he was only paying “whatever and whenever he could” due to his unemployment for a period of about seven to eight months beginning in March 2018, which the state considered a gift rather than child support. On a date not indicated in the record, State A garnished his wages in the monthly amount of \$1,064, including \$800 for child support and \$264 for the arrearage. Once he began working for his current employer in December 2018, State B adjusted his wage garnishment to his new salary, in an amount not indicated in the record, without including any amount for the arrearage, to which he attributes the debt alleged in SOR ¶ 1.e. During his SCI, he averred that his various attempts to reach State B to discuss a resolution of his debt were unsuccessful. In his Answer, he stated: “In process of coming to an agreement with other party involved.” A child-support order is not in place for his oldest child because he shares joint custody with her mother. (Item 2; Item 3 at 35; Item 4 at 2)

During his SCI, Applicant asserted that he was current with all of his day-to-day expenses. The only credit report in the record, from December 2020, revealed that he brought current an automobile loan account that had been 60 days past due. It also shows that he took out a cash loan in the amount of \$1,500 in July 2020, with a payment of \$261 per month and a balance of \$1,201, which was then current. (Item 4 at 5; Item 5 at 6)

Applicant reported one period of unemployment between March 2018 and May 2018, during which he received unemployment benefits in the amount of \$1,200 to \$1,500

bi-weekly. He was employed from September 2016 until March 2018, when he relocated from State A to State B. There is no information in the record about the reason for his relocation. His May 2021 paystub revealed an annual income of approximately \$54,000, including overtime. It also showed that his wages are garnished in the amount of about \$305 per pay period; and, that he pays about \$20 per pay period towards a 401k loan. There was no other information in the record about that loan. The paystub does not indicate any details about the garnishment. The record otherwise contains scant details surrounding his income and expense history. The record does not indicate whether Applicant sought or received financial counseling. (Item 3 at 15-16; Item 4 at 6)

Policies

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington*

Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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

Analysis

Guideline F: Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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

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

The record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or

occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant filed his 2018 through 2020 federal returns in May 2021. On a date not indicated in the record, he filed his 2020 state return for which he received a refund in May 2021. The extent to which his delayed filing was attributed to procrastination and laziness versus pandemic-related delays was not fully developed by the record. Nevertheless, I find that pandemic-related delays can reasonably explain the delays with respect to his 2019 and 2020 returns. While it is troublesome that he failed to file his 2018 returns without any justifiable excuse, I find SOR ¶ 1.j in his favor given that he filed them by May 2021, which is within a reasonable period following pandemic-related delays. However, I am unable to similarly find SOR ¶ 1.k in his favor given that the status of his 2018 and 2019 state return filings was not corroborated by sufficient evidence.

Applicant has not resolved any of the delinquent debts alleged in the SOR, including his federal taxes for tax years 2018 and 2019. I am unable to conclude that the debt alleged in SOR ¶ 1.d is resolved, as he claimed, without documentary proof. He did not proffer any evidence concerning whether he has made any payments since the forbearance period ended on the Navient loans. Although he did not establish that the USDOE loans were being serviced by Navient, they qualify for the emergency relief extended through August 2022. Whether his Navient loans qualify for that relief is unknown. In any event, the extent to which his USDOE loans and any federal loans held by Navient were entitled to the benefit of the emergency relief beginning in March 2020 does not suffice to mitigate concerns surrounding his nonpayment since 2011.

Applicant did not establish that his debts largely resulted from, or persisted, due to circumstances beyond his control. He did not demonstrate that his relocation was involuntary. He did not proffer sufficient evidence to demonstrate that he was unable to afford to make his child support, student loans, or any other expenses, including during the period that he received unemployment compensation. His December 2020 credit report does not demonstrate that his finances are under control, and there was no more recent credit report in the record to determine the current state of his finances.

The record does not establish that Applicant acted responsibly to address his

indebtedness nor did he demonstrate a track record of responsible action that leads me to conclude that he will follow through with his plans to resolve his delinquent debts. I am unable to conclude that his indebtedness is not likely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment. Thus, I find that Applicant has not mitigated the Guideline F concerns at this time. AG ¶¶ 20(a), (b), (d), and (g) are not established to mitigate the concerns alleged in SOR ¶¶ 1.a through 1.i, and 1.l.

Whole-Person Analysis

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

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

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k – 1.l:	Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge