



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



In the matter of:)	
)	
)	ISCR Case No. 20-01881
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 27, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on November 12, 2020, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on March 2, 2022.

The hearing was convened as scheduled on May 5, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant did not provide documents at the hearing. However, I left the record open until May 12, 2022, for Applicant to provide documents to support his case. On May 11, 2022, Applicant submitted Applicant’s Exhibits (AE) A through I, which were admitted in evidence without objection. During preliminary matters, Department Counsel moved to withdraw SOR ¶ 1.e. There being no objection, the motion was granted and SOR ¶ 1.e was stricken from the SOR.

Findings of Fact

Applicant is a 47-year-old employee of a small airline. He has worked for his current employer since about September 2013. He has a pending job offer from a government contractor contingent on him receiving eligibility for a clearance. He has a GED, attended some college courses from 2009 through 2012, and earned a trade license in 2012. He has been married twice. His first marriage was from 1998 until 2011. He was married again in 2020. He has two adult step-children. He served in the Army National Guard from May 2007 until June 2008, when he was medically discharged. He was awarded an honorable discharge. (Transcript (Tr.) 23-34; Applicant's response to SOR; GE 1.)

In November 2007, while he was in the Army National Guard, Applicant was issued an SOR (the 2007 SOR) that alleged various delinquent debts. One of the debts in the 2007 SOR consisted of an account secured by a repossessed vehicle. Applicant claimed that his ex-wife caused his delinquencies on these debts because she was in charge of their finances at the time. Applicant and his ex-spouse filed for Chapter 7 bankruptcy in about 2007, and received a discharge of almost \$100,000 of debt in about 2008. (Tr. 36-41; GE 5, 6)

The SOR alleges that Applicant had four delinquent debts totaling approximately \$21,000. These debts consist of a telecommunications debt, a medical debt, and two debts that were secured by repossessed vehicles. The SOR debts appear in Applicant's 2019 credit report, but not in his 2020 and 2022 credit reports. Applicant attributed the financial delinquencies contained in the SOR to a lack of income caused, in part, by an employment opportunity that did not pan out. More specifically, in about June 2013, he quit his job performing aircraft maintenance in State A and moved across the country to State B for a similar job that he thought he had been offered and accepted. However, after moving to State B and informing his new employer that he was ready to start work, his new employer informed him they had hired someone else and the opening was no longer available. Applicant decided to stay in State B, found a lower paying job not in his field, and looked for another job in aircraft maintenance. He found an aircraft maintenance position in State B with his current employer in about September 2013. (Tr. 27-29, 42; Applicant's response to SOR; GE 1-4, 6; AE I)

The \$173 telecommunications debt alleged in SOR ¶ 1.a has been resolved. Applicant testified that he settled this debt and presented a document dated November 13, 2020, from the creditor's collection agency evidencing that the debt had been settled for less than the full amount. (Tr. 51, 61-63; Applicant's response to SOR; GE 1, 2, 6; AE D)

The \$1,633 medical debt alleged in SOR ¶ 1.b has been resolved. After investigating this debt when he saw it on his credit report in 2019, Applicant claimed that a hospital billed him for medical services that were provided to someone else with the same name. He claimed that the charges were related to treatment for a broken hand, which he has never suffered. He claimed that he disputed the charge with the hospital and the collection agency. After not receiving any resolution, he disputed the charge

with Veterans Affairs (VA), and the charges were promptly removed from his credit report. Because of the timing and the lack of further contact from the creditor and the collection agency, he assumed that the VA resolved the issue in his favor. (Tr. 63-64; Applicant's response to SOR; GE 2, 6)

The \$7,379 vehicle loan alleged in SOR ¶ 1.c has not been resolved. Applicant told the background investigator in November 2019 that he would pay this debt once he accepted his contingent job offer with a government contractor. At his hearing, he testified he would pay it once he had enough extra funds to afford it. For an unspecified period of time, he did not pay the loan back because of his "arrogance." Additionally, he did not pay the debt because he thought the vehicle was not properly repaired after being involved in an accident, because he did not agree with the amount the vehicle sold for at auction, and because the debt no longer appeared on his credit report. He thought that if a debt no longer appeared on his credit report, he was no longer responsible for it, regardless of why the debt no longer appeared. Based upon the conflicting evidence, it is unclear whether he intends to pay it. He presented no documentary evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant actions to resolve this debt. (Tr. 50-60; Applicant's response to SOR; GE 1, 2, 6; AE I)

The \$11,836 vehicle loan alleged in ¶ 1.d has not been resolved. This debt became delinquent when Applicant abandoned his vehicle in State A after moving to State B in 2013. He told the background investigator in November 2019 that he would pay this debt once he accepted his contingent job offer with a government contractor. At his hearing, he testified that he would pay the debt once he had enough extra funds to afford it. He claimed that he tried to catch up on the debt after September 2013 when he found another aircraft maintenance position, but the creditor wanted payments that he could not afford. The vehicle that secured the loan was eventually sold at auction. For an unspecified period of time, he thought he did not have to pay the loan back because of his "arrogance." Additionally, he did not pay the debt because he didn't agree with the amount the vehicle sold for at auction, and because the debt no longer appeared on his credit report. Based upon the conflicting evidence, it is unclear whether he intends to pay it. He presented no documentary evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant actions to resolve this debt. (Tr. 27-29, 42-50; Applicant's response to SOR; GE 2, 6; AE I)

As early as November 2019, Applicant earned about \$72,000 annually with his current employer. In about November 2021, Applicant's wages at his job increased from almost \$30 per hour to almost \$42 per hour as a result of joining a union. He works at least 40 hours per week and is paid time and a half for overtime. After this raise, he makes about \$85,000 per year. Beginning in about 2011, he began receiving about \$600 per month in disability compensation from the military. Applicant's spouse does not work. In about 2019, she was struck by a vehicle and is applying for disability. Applicant testified that he has \$500 per month left over after accounting for all of his expenses. He holds stock valued at about \$35,000 and has between \$80,000 and \$100,00 in a retirement account. In April 2020, Applicant made a lump sum payment of about \$6,400 to pay off a car loan not on the SOR that he opened in April 2019. This car

loan was not delinquent when he paid it off. In October 2021, Applicant purchased a recreational vehicle (RV). He purchased the RV for \$42,000, putting \$20,000 down in cash. He obtained the cash to pay towards his purchase of the RV by selling some of his stock. As of the hearing date, Applicant had not filed his 2021 federal tax return. He knew he was late in filing this tax return and had not received an extension from the IRS. He planned to hire someone to file his 2021 tax return for him. He claimed that he is normally on time with filing his tax returns, but this year, because of a move, he has not had time to do so. He claimed that he does not normally owe money to the IRS when he does file his tax returns.¹ (Tr. 30-33, 53-54, 64-67, 74-77; GE 3; AE G, I)

Applicant provided documents evidencing his favorable resolution of several other debts not included on the 2007 SOR or the SOR. He also provided a character reference from his former landlord attesting to his compliance with the terms of his rental agreement, and her satisfaction with how he treated the property. He also provided a document showing that he completed a U.S. Army training requirement in 2007. (Applicant's response to SOR; AE A, B, E, F)

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

¹ Any adverse information not alleged in the SOR, such as Applicant's delinquent debts in his 2007 SOR, his bankruptcy, his payments on new accounts, and his late 2021 tax return filing cannot be used for disqualification purposes. It may be considered when assessing Applicant's rehabilitation, in the application of mitigating conditions, and for the whole-person analysis.

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 security 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

Guideline F, Financial Considerations

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

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

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

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant's SOR debts evidence his history of financial delinquencies that includes a telecommunications debt and two accounts secured by vehicles. These accounts have been delinquent for years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;

(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.

Applicant attributed his financial problems to a combination of a lack of employment and underemployment for a couple of months in 2013 and his "arrogance" in not thinking he owed a delinquent car loan if he didn't agree with the sale price of the vehicle at auction. He also blamed his lack of understanding that he could still be responsible for debts that no longer appeared on his credit report. His lack of employment and underemployment in 2013 was arguably beyond his control. His arrogance in thinking he need not address delinquent car notes because he did not think the secured property sold for sufficient proceeds at auction was within his control. Likewise, Applicant's lack of understanding of his possible continued responsibility for delinquent debts that no longer appeared on his credit report was within his control.

There is documentary corroboration that the debt alleged in SOR ¶ 1.a has been settled and paid for an amount less than owed. SOR ¶ 1.a is concluded for Applicant, as AG ¶ 20 (b) and AG ¶ 20 (d) apply.

Applicant has provided evidence that he resolved the medical debt in ¶ 1.b by disputing it with the creditor and the VA because he neither needed nor received the medical services for which this debt was owed. He also provided evidence that someone else with his name had received these medical services. His belief that he is

not responsible for this debt is reasonable given these circumstances. SOR ¶ 1.b is concluded for Applicant as AG ¶ 20 (e) applies to this debt.

Applicant's intentions with respect to the two car note debts are unclear. He has gone years without paying or addressing them. He claimed he intended to address them once he had sufficient funds to do so. He has received substantial pay raises and has accumulated sufficient financial resources to pay them and has elected not to. Instead, he purchased a \$42,000 RV. Regardless, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Moreover, as evidenced by Applicant's large, lump sum payments on other debts, Applicant likely had the funds to address the debts in SOR ¶¶ 1.c and 1.d, but chose not to. Applicant's evidence, is insufficient to show he has acted responsibly under the circumstances with respect to these debts, or that he has made a good faith effort to repay these creditors or otherwise resolve these debts.

Despite not having taken any steps to resolve them, Applicant has relied on the fact that, after the 2019 credit report, the debts in SOR ¶¶ 1.c and 1.d no longer appeared on his subsequent credit reports. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Additionally, as there is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, the absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate a history of financial difficulties or constitute evidence of financial reform or rehabilitation. ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

Applicant's financial issues prior to the SOR and his recent failure to timely file his 2021 IRS tax return also undermine his mitigation efforts because they provide evidence of frequency, likelihood of recurrence, and overall financial irresponsibility.

Overall, I am unable to find that the conditions that resulted in the financial problem were largely beyond Applicant's control, that he acted responsibly under the circumstances, or that he made a good-faith effort to pay his SOR debts. His financial issues are ongoing and continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concern is not mitigated.

Whole-Person Concept

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

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's military service and his positive character reference from his former landlord.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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 -1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant

Conclusion

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

Benjamin R. Dorsey
Administrative Judge