



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-01563
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
 For Applicant: *Pro se*
 07/25/2022

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 April 27, 2017. 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 8, 2021 (Answer), and requested a decision based on the written record in lieu of a hearing. On February 24, 2022, 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 March 2, 2022,

and timely submitted his response, to which the Government did not object. Applicant did not object to the Government's evidence. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. Applicant's FORM response included documents that are admitted into evidence as Applicant Exhibits (AE) A through J. The case was assigned to me on April 12, 2022.

SOR Amendment

I *sua sponte* amended the SOR to correct an apparent typographical error as to the amount alleged in SOR ¶ 1.b (\$2,3050.05). The SOR, as amended, reflects the correct amount of \$2,350.05, as supported by the evidence. (Item 3 at 17)

Findings of Fact

Applicant, age 45, has four children, ages 9, 15, 21, and 23. He married the mother of his four children in 2000. Although scant on details, the record indicates that they have been separated since about 2016. He attended a university from 2009 through 2012, without earning a degree. He served honorably on active duty with the U.S. Army from 1996 through 2016. Since then, he has been employed by defense contractors: first, as an instructor by Defense Contractor A from September 2016 through May 2018; and then as a training analyst by Defense Contractor B from May 2018 through at least November 2018. On a date not identified in the record, he became employed by Defense Contractor C (for whom he worked at the time he received the SOR in November 2021 and the FORM in March 2022), who is his current sponsor. He was granted a DOD security clearance in about 1996 in connection with his military service. (Items 1, 2; Item 3 at 6 and 9)

The SOR alleged that Applicant failed to timely file his federal and state tax income tax returns for tax years 2017 and 2018. It also alleged a \$2,350 delinquent federal income tax debt for tax year 2019 and four other delinquent debts totaling \$4,648. In his Answer, Applicant admitted each SOR allegation and stated: "I will make sure all my debts are paid in full. I made these debts and I accept full responsibility and consequences for what lead to my action." (Item 2)

Applicant failed to timely file his federal and state income tax returns for tax years 2017 and 2018, as alleged in SOR ¶¶ 1.a (federal), 1.c (State A), and 1.d (State B). In April 2019, the IRS granted him an extension to October 2019 to file his 2018 return. He did not request an extension for his 2017 return. He was required to file 2018 returns in two states due to his May 2018 relocation from State A to State B. He filed his 2017 and 2018 returns on May 24, 2021, and then timely filed his 2019 and 2020 returns. (AE I, J; Item 1 at 3; Item 3 at 6, 13, 17, 18)

In February 2018, Applicant sought advice from a tax professional after he learned that his spouse claimed their children as her dependents on her 2017 tax return. He was advised that he could not also claim their children on his 2017 tax return. The tax professional estimated that he would owe taxes of about \$7,000 and advised him to file his 2017 return and then set up a payment plan for the amount owed. However, Applicant

opted not to timely file his 2017 return. He initially planned to wait until he could claim his children as dependents on his 2018 return, at which time he would pay his 2017 tax debt. He did not specifically address why he failed to follow through with his initial plan or the reason he did not timely file his 2018 return. However, in his FORM response, Applicant stated:

Waiting to take care of my issues was wrong but at the time I was financially not able to do anything because I was going through personal problems that led me not to fulfill my obligations. Not filing my taxes for 2017 and 2018 is the first and only time I have ever missed filing my taxes. I know there is no excuse that is good enough to not file taxes and for that I am truly sorry. I own up to my faults and mistakes and will fix all my issues no matter how long it takes me.

In his Answer, Applicant acknowledged that failing to timely file his returns “was wrong” and a “lapse of judgment.” (FORM Response; Item 1; Item 3 at 6, 9)

Although it was not alleged in the SOR, Applicant failed to pay federal income taxes for tax years 2017 and 2018, the balances of which were \$15,723 and \$4,743, respectively, as of March 2022. I will consider those debts only to evaluate mitigation and the whole-person concept. As alleged in SOR ¶ 1.b, he also failed to pay federal income taxes for tax year 2019, the balance of which was \$2,350 as of October 2021. The record did not indicate whether he has any state tax debt. In April 2021, the IRS transferred a \$2,807 credit from his account to a 2016 federal tax debt and applied his tax year 2020 refund of \$1,804 to unspecified “non-IRS debt.” In his Answer, Applicant attributed his 2019 tax debt to his filing status being incorrect. He asserted that he “made some corrections to fix that problem” and was “in the process of trying to pay everything off.” He stated: “I know its [*sic*] going to take some time, but I am going to make sure everything is paid off because this is the first and only time, I have ever done anything like this.” (AE I, J; Item 1; Item 3 at 17, 18)

The \$3,837 debt alleged in SOR ¶ 1.e is a military exchange credit-card account that was placed for collection. Applicant used the card to help pay household bills and to buy clothes and shoes for his children. The debt is being paid through \$60 monthly garnishments of Applicant’s military retirement pay. In his answer, Applicant stated that he was making payments in addition to the garnishment. However, he did not specify the amounts of those payments or proffer any documents to corroborate them. A February 2022 credit report showed a reduced balance of \$3,744. (AE D at 27; Item 1 at 3; Item 2 at 40; Item 6 at 17-18; Item 3 at 10; Item 4 at 2; Item 5 at 2)

The \$340 debt alleged in SOR ¶ 1.f is a bill from a 2019 emergency room visit that was placed for collection. Applicant was surprised by the bill because he thought it would have been paid in full by either Tricare or his U.S. Department of Veterans Affairs (VA) disability benefits. He claimed that when he tried to pay the debt, the creditor told him that it had been paid by the VA, and then he contacted the credit bureau agencies to remove the debt. He did not proffer any corroborating documents. However, the debt did not appear on his recent credit reports. (AE D-F; Item 1 at 3; Item 4 at 3; Item 5 at 2)

The \$86 debt alleged in SOR ¶ 1.g is a dental bill placed for collection for which Applicant was responsible to pay. He paid the debt in full in November 2021. (AE G; Item 1; Item 4 at 3; Item 5 at 2)

The \$385 debt alleged in SOR ¶ 1.h is an account that was charged off. The type of account was not indicated in the record. He paid \$466 in January 2021 to resolve the debt. (Item 4 at 4; Item 5 at 3; Item 6 at 22)

There were additional delinquent debts revealed in the record that were not alleged in the SOR. I will consider them only to evaluate mitigation and the whole person concept. Five were revealed on Applicant's June 2020 and April 2021 credit reports in the following amounts: \$11,942 (1), \$11,833 (2), \$1,427 (3), \$909 (4), and \$284 (5). Another was reported on his SCA: a \$3,000 (6) loan account that was charge-off in approximately October 2014. During his November 2018 security clearance interview (SI), he disclosed a January 2018 lawsuit filed by the creditor of a loan account (7) on which he had been six months' delinquent, and a \$568 debt (8). He also confirmed seven other delinquent debts totaling \$8,137 (9) that were apparently listed on a credit report not included in the record. (AE H; Item 2 at 39; Item 3 at 9; Items 4, 5)

In February 2021, Applicant set up a payment plan with a reduced balance of \$8,150 to resolve the \$11,942 (1) debt in monthly installments of \$170. He paid \$170 in February 2021. His last payment is scheduled for January 2025. He did not proffer documents to corroborate any payments he made pursuant to this plan after February 2021. (Item 6 at 3, 12-14)

In his SCA, Applicant asserted that he had been "working to pay [off] the \$11,833 (2) debt. During his SI, he explained that the debt was a loan he took out in 2013 to help pay household bills. Although the creditor presented a settlement offer of about \$4,000 to \$5,000 for him to resolve debt, he maintained that he was not able to pay that large of an amount in the timeframe requested. (Item 2 at 39; Item 3 at 9-10)

In January 2021, Applicant paid the \$1,427 (3) and \$284 (5) debts in full, and a reduced amount of \$364 to resolve the \$909 debt (4). During his SI, Applicant asserted that the creditor called to present a settlement offer for the \$3,000 debt (6) in October 2018. He maintained that he intended to call them back to set up a payment plan. Between January 2018 and April 2018, Applicant made monthly payments totaling between \$600 to \$650 to settle the lawsuit debt (7). In August 2021, he "paid off or settled" the \$568 debt (8). The record did not contain sufficient information to determine the status of the seven other delinquent debts totaling \$8,137 (9). (AE H; Item 3 at 10; Item 6 at 4, 5, 19, 20, 21)

In his SCA, Applicant attributed his indebtedness to "not making enough." During his SI, he attributed his financial hardship to a period that began in April 2004, due to mental health struggles he experienced following his Iraq deployment. During that period, he gave up and stopped taking care of his financial responsibilities, which he found overwhelming. While he was going through that hard time, he "just wasn't sure how to start paying off all of his debt." He sought and continued to participate in mental health

counseling until 2017, which he intended to resume in State B once he located a new counselor. He described his psychological health as “much better.” In a February 2021 response to DOHA-issued interrogatories, he stated:

There is no reason to explain my actions about my credit being in the position that it is. I was young, and I didn’t think about what would happen to me. But I know that no matter what I am going through or what I went through, I will never turn my back on my country or the people I swore to protect while serving in the Army. (Item 2 at 39-41; Item 3 at 11; Item 6 at 6)

During his SI, Applicant proffered a plan to engage the services of a credit counseling firm to assist him with resolving his delinquent debts. At that time, he was maintaining two households: his in State B, and his wife and children in State A. He relocated to State B for employment with better pay. He intended to use the increased income to “pay off all of his debt and provide a good life for himself and his family.” He was unable to provide a specific timeframe for a full debt resolution at that time. The record did not indicate whether he ever engaged the services of that firm. (Item 3 at 11)

In a February 2021 personal financial statement (PFS), Applicant reported an \$8,073 monthly net income, including \$1,194 military retirement pay and \$3,931 VA disability pay. He estimated a \$2,535 monthly net remainder. His two February 2021 paystubs revealed that he took out a 401k loan at some point, for which he was repaying \$119 per pay period, and that his pay was being garnished for child support in the amount of \$530 per pay period. There was no other information in the record about his child support obligation. Applicant provided three recent credit reports, one from each credit bureau agency, dated February 2022. They revealed that he opened 14 new credit accounts in the last two years. (AE D-F; Item 6 at 9-11)

In his FORM response, Applicant stated:

I enjoy what I do and working alongside America’s warfighters [fills] a void that was created when I took off the uniform. Not then, now, or anytime in the future would I ever put my country or the warfighters that protect me and my family in harm’s way regardless of my financial situation. I have worked diligently to take care of the things mentioned above and will continue until they are dissolved. My love for this country and patriotism outweighs any risk of me being a threat to national security.

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;

AG ¶ 20(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; 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.

Because Applicant eventually filed his 2017 and 2018 returns in May 2021 and timely filed his subsequent returns, AG ¶¶ 20(g) applies in part. His choice to ignore his obligation to timely file his 2017 returns to avoid a tax bill was not excusable. It demonstrated poor judgment and a willingness to place his own self-interest above his legal obligations, which casts doubt as to whether he may also act similarly in the context of his security obligations. Thus, AG ¶ 20(a) is not established. While he indicated that he has been working to resolve at least his 2019 tax debt, he did not establish that he made payment arrangements with the IRS and is in compliance with those arrangements for tax year 2019 or the other tax years. As a result, AG ¶ 20(g) is not fully established. Accordingly, I find SOR ¶¶ 1.a through 1.d against Applicant.

With respect to his delinquent debts, I find SOR ¶¶ 1.f through 1.h in Applicant's favor. AG ¶ 20(e) is established as to SOR ¶ 1.f. and AG ¶ 20(d) is established as to SOR ¶¶ 1.g and 1.h. Because it is being resolved via a wage garnishment, AG ¶ 20(d) is not established as to SOR ¶ 1.e. It is also not mitigated by any of the other relevant factors due to Applicant's underlying history of indebtedness that continues to persist, of which SOR ¶ 1.e is a part.

AG ¶ 20(b) applies to the extent that Applicant's debts were attributable to his separation from his wife and the period when he struggled with his mental health following his Iraq deployment. However, I am unable to fully apply AG ¶ 20(b) because the record lacked sufficient detail for me to conclude that his debts have persisted largely due to those circumstances or that he acted responsibly to resolve his debts. He also attributed his indebtedness to "not making enough," but his relevant income and expense history was not fully developed by the record. He reported gainful employment with a \$2,535 net remainder as of February 2021.

Not only did Applicant fail to establish that he resolved any of his tax debts, he continues to rely heavily on credit to meet his expenses, as evidenced by the 14 new credit accounts he opened in the last two years. The record also suggests that he has other delinquent debts that were not alleged in the SOR. He is credited with paying \$552 to resolve SOR ¶¶ 1.g and 1.h and approximately \$3,453 towards some of his non-SOR debts. However, he did not demonstrate that he has control of his finances or that his indebtedness is unlikely to recur. He may be able to overcome the security concerns at some future date should he successfully resolve his indebtedness to the IRS and others. However, based on the evidence before me, I cannot conclude that Applicant has provided sufficient evidence to fully mitigate the Guideline F concerns at this time.

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) and Applicant's distinguished service as a combat veteran. 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 and failure to timely file his federal and state income tax returns. 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.e:	Against Applicant
Subparagraphs 1.f – 1.h:	For 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