



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-02571
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, 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 July 20, 2020. On December 16, 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.

On December 23, 2021, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On February 23, 2022, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 7. 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 4, 2022, but did not respond to the FORM or object to the Government's evidence. The case was assigned to me on May 25, 2022.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Items 3 through 7 are admitted into evidence. Although Item 7 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 7. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 7 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 7 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 7 could be considered as evidence in his case.

Findings of Fact

Applicant, age 33, divorced his wife of three years in 2019. They separated in 2017. They share custody of two children, ages 7 and 8. Although it was not court ordered, they agreed that Applicant would pay \$800 per month for child support. (Item 3; Item 7)

Applicant served on active duty as an enlisted member of the U.S. Air Force from 2012 until 2017, and then as an inactive reservist until 2019. He received his high school diploma in 2006, and a bachelor's degree in computer electronics engineering technology in about January 2020. He has been employed as a field service representative by the defense contractor sponsoring his SCA since November 2019. He was previously granted a DOD security clearance on a date not indicated in the record. (Item 3)

The SOR alleged 10 delinquent debts totaling \$48,688, including five federal student loans totaling \$38,634. In his Answer, Applicant admitted all but one of the alleged debts. His admitted debts totaled \$45,588. Each of the SOR allegations were also confirmed by his May and December 2021 credit reports. (Items 5-6)

Applicant took out the aforementioned student loans (SOR ¶¶ 1.c through 1.g) to pay for his bachelor's degree. The May 2021 credit report shows the date the loans were opened as: July 2008 (SOR ¶ 1.c), December 2007 (SOR 1.d), July 2007 (SOR ¶ 1.e), April 2007 (SOR ¶ 1.f), and October 2006 (SOR ¶ 1.g). During his June 2021 security clearance interview (SI), he stated that he attended university from September 2006 through January 2020. He also averred that after graduation, he was able to obtain deferments two times. He was not able to provide the dates of the deferments or the amount of the loans at the time of the deferments. Information in his credit reports indicate the loans have been in delinquent status since about June 2019 (SOR ¶ 1.c) and July 2019 (SOR ¶¶ 1.d through 1.g). The record did not address these discrepancies. (Item 5 at 4-5; Item 6 at 2-7; Item 7 at 3)

Applicant contacted the collection agent for his student loans on the morning of his SI and was offered a repayment plan. He maintained that he could not afford the \$330 per month required of that plan, but intended to contact the agent again after his SI to try

to negotiate the monthly payment down to \$200, which was an amount he maintained that he could afford to pay. He attributed his delay in contacting the collection agent to his belief that his loans were in forbearance. In his Answer, Applicant asserted that he was resolving the student loan debts in SOR ¶¶ 1.c through 1.g through an income-based repayment plan. However, he did not provide any corroborating documents. (Item 2; Item 7 at 3-4)

Applicant did not assert that his student loans were subject to the current emergency relief available for federal student loans, nor did the statements he made during his SI and in his Answer indicate such. However, *l sua sponte* took administrative notice of the fact that, beginning March 13, 2020, due to the COVID-19 pandemic, the U.S. Department of Education has been providing emergency relief for 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

Applicant denied the debt in SOR ¶ 1.a (\$100) on the basis that it is unknown to him. Despite his research, he has not found a way to contact the creditor to confirm the debt. In his Answer, he stated that had “disputed this account.” The debt in SOR ¶ 1.a appeared on his May 2021 credit report, but not his December 2021 credit report. (Items 2, 4, 5)

Applicant paid the debt in SOR ¶ 1.j (\$81) and intends to pay the debts in SOR ¶¶ 1.b (\$1,125), 1.h (\$2,992), and 1.i (\$5,756) once he refinances his home mortgage. The debt in SOR ¶ 1.b is related to a military exchange credit-card account. The debts in SOR ¶¶ 1.h and 1.i are related to two consolidation loans he took out to pay off car loans. He used the first one in September 2016 (SOR ¶ 1.i) to pay off the remaining balance of Truck A. He financed the \$42,000 purchase of Truck A in 2015 with a \$572 monthly payment. After about a year, he realized that he could no longer afford the payments so he sold Truck A leaving a remaining balance of about \$10,000, which was charged off by the bank. The record did not indicate why the reported balance due is \$5,756 given that Applicant has not made any payments on the account since it was charged off. He used the second consolidation loan in July 2017 (SOR ¶ 1.h) to pay off a \$2,992 deficiency balance remaining after Truck B was repossessed due to nonpayment in 2017 or 2018. During his SI, he acknowledged that he had never contacted the creditors about the debts in SOR ¶¶ 1.b, 1.h or 1.i. In his Answer, he asserted that he was “in the process of refinancing [his] home in order to get all my account [*sic*] back into good standing,” and “working to set up a repayment plan” to resolve the debt in ¶ SOR 1.b. (Items 2, 5, 6; Item 7 at 5)

During his SI, Applicant disclosed a third vehicle that had been repossessed in 2018 due to nonpayment. He financed the \$20,900 purchase of this vehicle in 2016 with a \$350 monthly payment. He asserted that he fell behind in payments because he could

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>

no longer afford the monthly payment. In September 2020, he settled the debt for an amount he could not recall. (Item 5 at 9; Item 7 at 4)

Applicant opened all of the accounts underlying his non-student loan debts during his marriage. He relied on his wife's income to pay those bills. He asserted that, once they separated (on a date not indicated in the record), he was "forced to take on all the financial burden and simply could not do it alone." In his Answer, he maintained that "I'm actively trying to resolve financial conflicts the best and most efficient way I can" (Item 2; Item 7 at 3)

Applicant sought help from a debt relief company in about 2020 to assist him with resolving his debts. However, he was unable to recall any details about their agreement, including which debts were involved, the amount he paid the company each month, and the extent to which the company assisted him with his debts. He was not certain for how long he worked with the company, but estimated about one year. He asserted that he stopped working with them because he could no longer afford the monthly payments. He did not indicate whether the company provided him with any financial counseling. (Item 7 at 4)

Applicant also attributed his financial situation to other factors in addition to his separation and divorce, including his own financial irresponsibility. In his SCA, he reported that his 2018 DWI conviction negatively impacted his finances. During his SI, he explained that he fell behind on his mortgage payments following the DWI. He was able to bring the mortgage current through a loan modification. He has prioritized paying expenses associated with the care of his children, including a keeping a roof over their heads, gas in the car for transportation to get them to daycare and him to work, and paying for food and utilities. (Item 3 at 37-38, 40; Item 4 at 6; Item 5 at 5; Item 7 at 3)

Applicant reported earning a monthly salary of about \$5,000 per month in June 2021 and October 2021. He reported income and expenses that left him with a monthly net remainder of \$954 as of July 2021 and \$240 as of October 2021 (due to increased car and childcare expenses). During his SI, he indicated that he was trying to get a raise to help him repay bills. His December 2021 credit report revealed no new delinquent debts. (Item 4 at 6-7; Item 5; Item 7 at 5-6, 9)

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. Sep. 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(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

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

(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.

I find SOR ¶¶ 1.a and 1.j in Applicant's favor. AG ¶ 20(e) is established as to SOR ¶ 1.a. and AG ¶ 20(d) is established as to SOR ¶ 1.j.

The record indicates that Applicant's student loans became delinquent prior to his reported graduation in 2020. Although his statements suggest otherwise, his loans appear to qualify for the COVID-19 emergency relief extended through August 2022. However,

the extent to which his loans may be entitled this relief does not suffice to mitigate concerns surrounding his nonpayment since they initially became delinquent in June 2019 and July 2019. He did not provide sufficient evidence to demonstrate his pre-pandemic efforts to resolve them. Accordingly, his loans underscore the ongoing concern surrounding his history of indebtedness.

The unresolved non-student loan debts in SOR ¶¶ 1.b, 1.h, and 1.i total \$9,873. Undoubtedly his separation and divorce negatively impacted his finances and AG ¶ 20(b) is partially established. However, he acknowledged that other factors also underlay his accumulation of delinquent debts. The record lacked sufficient detail for me to conclude that his debts have persisted largely due to circumstances beyond his control, or that he acted responsibly to resolve his debts. Thus, AG ¶ 20(b) is not fully established.

Applicant is credited with successfully modifying his mortgage loan following his DWI-related default, and with resolving one of his three auto loan debts. Moreover, the fact that he has not accumulated any new delinquent debts weighs in his favor. However, with respect to the SOR debts, the record reflects that he paid only one \$81 debt. I considered that he is not required to be debt-free in order to merit a favorable determination about his eligibility for access to classified information. Without a meaningful track record of regular and timely payments to his creditors, I am unable to conclude that he will follow through with his plans to resolve his delinquent debts or that his indebtedness is unlikely to recur. While he may be able to overcome the security concerns at some future date, based on the evidence before me, I cannot conclude that Appellant has mitigated the Guideline F concerns at this time. AG ¶ 20(a), (b), (d), and (e) have not been established as to SOR ¶¶ 1.b through 1.i.

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 unresolved 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.i:	Against Applicant
Subparagraph 1.j:	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