



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



In the matter of:)	
)	
)	ISCR Case No. 19-03546
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2022

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 January 13, 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 February 22, 2020, and again on March 17, 2020. He requested a hearing before an administrative judge in both responses. After a delay because of the COVID-19 pandemic, the case was assigned to me on May 17, 2022.

The hearing was convened as scheduled on July 7, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. At Applicant's request, I left the record open for the parties to provide additional documents. Applicant provided post-hearing documents that were admitted in evidence without objection as Applicant's Exhibits (AE) A through H. I received a transcript of the hearing on July 14, 2022.

Findings of Fact

Applicant is a 42-year-old employee of a government contractor for whom he has worked since April 2017. He worked for another government contractor from December 2009 until he began his current employment. He earned a high school diploma in 2000 and an associate's degree in 2008. He has been married since 2016. Applicant has one child who is four years old. (Transcript (Tr.) 31-32, 39-40; Applicant's response to SOR; GE 1, 6)

The SOR alleges Applicant's 15 delinquent debts totaling approximately \$53,000. These delinquencies consist of personal loans, credit cards, student loans, and a car loan. Approximately \$30,000 of the delinquent debt in the SOR is for student loans. Applicant admitted all of the SOR allegations with additional comment. His admissions are adopted as findings of fact. (Tr. 19-77; Applicant's response to SOR; GE 1-7; AE A-H)

Applicant attributed his financial issues to several causes. He admitted that, earlier in his life, he was immature about his financial responsibilities and ignored his debts. He also knowingly spent beyond his means. For example, he took out a \$10,000 loan to pay for his wedding which he later defaulted on. He also borrowed \$1,200 for his son's baptism despite being delinquent on other financial obligations. Applicant was in a car accident in April 2017 that totaled his car. He could not afford to pay the difference between what was owed on his car loan and the amount he received from his insurance company for his totaled car. In 2017, he and his wife had a son who had a milk allergy, so he had to spend extra money on special formula that his son could tolerate. He also took on a substantial amount of his wife's and his in-law's debt that is not listed in the SOR, but has contributed to his inability to cover his expenses.¹ Finally, his wife was not working between about 2015 and July 2021, when she began earning a modest and sporadic income of no more than \$200 per month. (Tr. 19-31, 38-40, 48-51, 54, 58-69, 70-74; Applicant's response to SOR; GE 1, 6)

Applicant's 2019 security interview with his background investigator made him realize that his security clearance was in jeopardy. In about July 2019, after beginning the process to renew his security clearance, and having had his background interview, Applicant decided to get his debts under control. He and his wife contacted a debt consolidation company (Company A) and entered into an agreement for Company A to negotiate payments with Applicant's and his wife's creditors on their behalf (the Agreement). The Agreement allowed Applicant to pay money into an account with Company A. Company A would then draw funds from his account in order to pay Applicant's and his wife's creditors a monthly amount that it had negotiated with them. Applicant is currently paying Company A about \$552 per month under the Agreement. Applicant and his wife decide which debts and in what order they want Company A to address. Applicant has included some of the SOR debts as part of his rehabilitation program with Company A, but decided to attempt to resolve some of the SOR debts,

¹ Any adverse information not alleged in the SOR, such as Applicant's wife's or in-law's delinquent debt, or his ability to pay it, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

such as his delinquent Federal student loans, outside of the Company A program. Applicant and his wife have also included with Company A, non SOR debts that belong to Applicant's wife and his in-laws. Out of a sense of moral (not legal) obligation, Applicant agreed to pay certain debts that his wife and his in-laws had incurred. The SOR debts are in various stages of resolution. Some have been paid for less than the full balance, some are in the process of being paid, and some remain unaddressed. As he finishes paying debts through Company A, Applicant has cycled in other debts for Company A to negotiate and pay. His plan is to continue this approach until he is debt free. His agreement with Company A began in August 2019 and it was to continue for 53 months. He has provided documents to show that he has paid down or has settled some debts for less than the full amount. Applicant has not prioritized negotiating and paying his SOR debts through Company A over his wife's and his in-law's debts. (Tr. 33-38, 40-47, 49, 51-56, 60-67, 70-76; Applicant's response to SOR; AE A-H)

The \$1,786 credit card debt alleged in SOR ¶ 1.a is being resolved by payments through Company A. Applicant has 25 remaining monthly payments to make out of 47 total. If he continues to make his payments as scheduled, he will have settled this debt through payments of \$864 in total by the end of July 2024. (Tr. 20-22, 33, 36; Applicant's response to SOR; GE 1-6; AE A, G)

The delinquent debts in SOR ¶¶ 1.b, 1.c, 1.f, 1.i, 1.m, and 1.n. have been settled by Applicant paying less than the full balance to creditors. With the exception of the debt in SOR ¶ 1.m, which he negotiated and paid on his own, Applicant made his payments to these creditors through Company A. (Tr. 22-29, 36-37; Applicant's response to SOR; GE 1-6; AE A, G, H)

The \$1,886 credit card debt alleged in SOR ¶ 1.d was settled and paid for an amount less than the full balance in June 2022. (Tr. 23; Applicant's response to SOR; GE 1-6; AE C, G)

The \$7,040 car loan alleged in SOR ¶ 1.e has not been resolved. This debt was incurred in the aforementioned instance when Applicant's insurance payment on his totaled vehicle did not cover the full amount of his auto loan. The latest activity date for this debt on any of the credit reports is December 2017. Applicant has not entered into payment arrangements with respect to this debt, but plans to pay it when he receives his anticipated 2022 income tax refund sometime in 2023. (Tr. 23, 44; Applicant's response to SOR; GE 1-6; AE G)

The \$3,283 personal loan alleged in SOR ¶ 1.g has not been resolved. Applicant incurred this debt in about 2016 in order to pay for landscaping at his residence. The December 2019 credit report reflects a last payment date of September 2018. Applicant has not entered into payment arrangements with respect to this debt, but plans to add it to the list of debts that Company A will resolve on his behalf in November 2022. (Tr. 25-26, 44-46, 71; Applicant's response to SOR; GE 1-6; AE A, G)

The \$2,142 personal loan alleged in SOR ¶ 1.h has not been resolved. Applicant incurred this debt to pay for his son's baptism (although he also testified the loan was

used for Christmas gifts). The December 2019 credit report reflects a last payment date of March 2019. Applicant has not entered into payment arrangements with respect to this debt, but plans to add it to the list of debts that Company A will resolve on his behalf in late August 2022. He plans on making a down payment on his debt in August 2022. (Tr. 25-26, 46-47; Applicant's response to SOR; GE 2-6; AE G)

The student loans for \$17,246 and \$13,265 alleged in SOR ¶¶ 1.j and 1.k, respectively, have not been resolved. While these student loans are currently in a deferred status as of March 2020 as a result of the pandemic, the latest last activity date listed on a credit report is February 2019. The December 2019 credit report shows a first delinquency date of February 2017. Applicant acknowledged making only a couple of payments on these debts after they first became due in 2008 or 2009, and then repeatedly requested forbearance because he could afford to pay them. He plans to contact his student loan servicer in September 2022 in order to begin making payments and to seek student loan forgiveness. (Tr. 26, 40-44, 55, 57; Applicant's response to SOR; GE 1-6; AE G)

The \$1,072 credit card debt alleged in SOR ¶ 1.l has not been resolved. Applicant has not entered into payment arrangements with respect to this debt, but plans to add it to the list of debts that Company A will resolve on his behalf in late August 2022. Applicant incurred this debt for day-to-day expenses. The December 2019 credit report reflects a last payment date of September 2018. (Tr. 46; Applicant's response to SOR; GE 1-6; AE A, G)

The \$774 credit card debt alleged in SOR ¶ 1.o has not been resolved. Applicant has not entered into payment arrangements with respect to this debt, but plans to add it to the list of debts that Company A will resolve on his behalf in early August 2022. Applicant incurred this debt for daily expenses. The December 2019 credit report reflects a last payment date of February 2017. (Tr. 29, 47; Applicant's response to SOR; GE 1, 4; AE G)

Applicant submitted earnings statements from his employer for the June 1 through June 15, 2022 pay period, as well as the June 16 through June 30, 2022 pay period. Applicant's hourly pay is \$29.58. Both of these earnings statements reflect significant overtime, which substantially increased Applicant's earnings. For the first pay period in June 2022, Applicant worked 15.5 hours of overtime. For the second pay period in June 2022, he worked 22.5 hours of overtime. His take home income for the June 2022 pay periods was \$3,152 and \$3,304, respectively. The number of overtime hours he normally works per pay period has not been established, but Applicant testified that he makes about \$53,000 annually without overtime and between \$70,000 and \$80,000 annually with overtime. Applicant also submitted a budget worksheet as part of his evidence. In it, he lists his and his wife's monthly income as \$7,044. Applicant's take-home pay in June 2022, as established by his earnings statements, was \$6,456 and included significant overtime. Applicant's wife contributes no more than \$200 per month. Therefore, it is unclear how Applicant arrived at the higher figure on his budget worksheet, which detracts from its accuracy. In his budget worksheet, Applicant lists expenses of \$3,804 and a monthly surplus of \$1,640. He also provided a bank

statement showing that he has about \$63 in his checking account and about \$1,209 in his savings account. He has received some financial counseling through one of Company A's subsidiaries by watching some online videos. In the Agreement, Company A advised against incurring any additional debt while in their program. After receiving the SOR, Applicant has incurred additional debt on two credit cards, but claimed that he is current on those new credit card accounts. (Tr. 31, 49; Applicant's response to SOR; AE B, D-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."

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 had over a dozen delinquent debts, including Federal student loans, that went unresolved for several years. Many of these delinquent debts remain unresolved. 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;

(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; and

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

Applicant's financial problems resulted both from conditions within his control and beyond his control. Spending beyond his means, ignoring his financial responsibilities, and taking on some of his in-law's debts were within his control. Applicant's decision to address some of his in-law's debts before his own was also within his control. The 2017 car accident and its resultant financial consequences, his son's health problems, and his wife's unemployment were beyond Applicant's control.

There is sufficient evidence that the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.i, 1.m, and 1.n have been resolved through payment. I find in Applicant's favor with respect to these debts. The debt alleged in SOR ¶ 1.a is being resolved through payments. I find in Applicant's favor with respect to SOR ¶ 1.a, as well.

However, many of the SOR debts remain unaddressed. Applicant has largely ignored the student loans listed in SOR ¶¶ 1.j and 1.k for over a decade. A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an Applicant's reliability, trustworthiness, and ability to protect classified information. ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While those debts are in a deferment status because of the pandemic, Applicant had already defaulted on them prior to the deferment. When student loans are placed in a deferment status after they are in default, Applicant's past inactions are not excused in the context of security clearance eligibility. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021).

I also note that Applicant admitted that he began to address his finances after he realized his clearance was in jeopardy. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Overall, while Applicant has taken significant steps in the right direction to address his financial problems, I have doubts about his ability to continue to repay his

debts. It is unclear how much Applicant will have to pay on his student loans and other unaddressed debts when he begins to make payments on them. While Applicant's budget worksheet shows a fairly significant monthly surplus, his income amount in that worksheet is not supported by other evidence and is significantly impacted by the arbitrariness of working overtime. The relatively insignificant amount of money he has in his bank accounts in relation to his overall debt also gives me pause about his financial stability as well as the accuracy of his budget worksheet. While there is no evidence that he is delinquent, Applicant added to his total indebtedness by opening up two additional credit cards after the SOR was issued. This decision is inconsistent with the guidance he was provided by Company A, and tends to undermine his efforts to show that he has reformed his past habit of spending beyond his means.

These concerns undermine Applicant's ability to show that his financial issues are unlikely to recur. The timing of his efforts to meaningfully address his debts detracts from showing those efforts were made in good faith and, to the extent his delinquencies were beyond his control, whether he acted responsibly under the circumstances. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concerns are 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.

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.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.k-1.l:	Against Applicant
Subparagraphs 1.m-1.n:	For Applicant
Subparagraph 1.o:	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