



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



In the matter of:)
)
) ISCR Case No. 19-03640
)
Applicant for Security Clearance)

Appearances

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

08/22/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to make sufficient progress addressing delinquent debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 8, 2017, Applicant completed and signed an Electronic Questionnaires for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 19, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2)

Applicant provided an undated response to the SOR, and he requested a hearing. (Transcript (Tr.) 13-14; HE 3) On May 3, 2021, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On May 3, 2022, the case was assigned to me. On June 17, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 11, 2022. (HE 1) The hearing was held as scheduled.

Department Counsel offered four exhibits into evidence, and Applicant did not offer any exhibits into evidence at his hearing. (Tr. 12, 18-19; GE 1-GE 4) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 19) On August 5, 2022, DOHA received a transcript of the hearing. The record was held open until August 12, 2022, to enable Applicant to provide additional documentation. (Tr. 76, 81) Applicant provided 28 post-hearing documents, which were admitted into evidence without objection. (Applicant Exhibit (AE) A-AE BB) Some of Applicant's exhibits consisted of multiple related documents.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.b through 1.f, and he denied the SOR allegation in ¶ 1.a. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 44-year-old aircraft mechanic who has been employed by the same DOD contractor since 2015. (Tr. 6, 28) In 1996, he graduated from high school. (Tr. 7) He has taken some college classes; however, he has not received a degree. (Tr. 7) He served in the Air Force from 1996 to 2014, and he received early retirement as a technical sergeant (E-6) under the Government's Temporary Early Retirement Authority. (Tr. 7, 27) He received monthly retirement pay and medical benefits. (Tr. 8) He has held a security clearance for seven years while working for a DOD contractor, and there are no allegations of security violations. (Tr. 28) His resume provides further details about his employment. (AE Y)

Applicant was married from October 1998 to June 2005. (Tr. 21; GE 1) He was married the second time from July 2009 to July 2010. (Tr. 21-22; GE 2) His two children are ages 20 and 21; they are married; and they do not live with him. (Tr. 9, 26)

Financial Considerations

As a result of his first divorce, Applicant had monthly child-support payment responsibilities of \$1,200, and he was required to pay about \$900 monthly for a debt consolidation loan he obtained to pay off marital debts and for other costs. (Tr. 32, 37; AE E at 6; AE BB) His first wife was dishonest about opening credit card accounts in Applicant's name while he was deployed. (Tr. 32) He eventually paid off the debt consolidation loan. (Tr. 37)

From March 2016 to February 2018, Applicant cohabitated with his girlfriend, who had been medically discharged from the Air Force. (Tr. 22-23) She had mental-health issues, and she attempted suicide. (Tr. 23) She was unemployed. (Tr. 23) Applicant's finances were harmed by his support for her. (Tr. 23) He did not detail how much he paid to assist her.

The August 19, 2020 SOR alleged six delinquent debts totaling \$42,165 as follows:

SOR ¶ 1.a alleges Applicant's mortgage is past due in the amount of \$24,443. On March 14, 2012, Applicant obtained a \$185,423 mortgage with \$46,355 repayment guaranteed by the Department of Veterans Affairs (VA). (Tr. 30-31; AE A; AE B) This mortgage enabled him to purchase a house near an Air Force Base where he was assigned. The home was newly constructed, and the development where it was located had new homes under construction. (Tr. 36) In October 2014, the mortgage account was one month late because of Applicant's support for his cohabitant, who was an inpatient at a military hospital at a distant location. (Tr. 34) In October 2014, Applicant retired from the Air Force and moved out of the house. (Tr. 33) A friend moved into the house in October 2014, and his friend paid rent for several months. (Tr. 33-34) The \$1,300 rent was sufficient to pay the mortgage, insurance, and taxes. (Tr. 34) Applicant's tenant advised him that he was having financial problems and could not pay the rent. (Tr. 36; AE N) Applicant was unable to sell the home because new homes were available at similar prices, and he could not compete with them. (Tr. 36-37)

In August 2016, the creditor received a judgment for \$202,226 for Applicant's residence, and the deed for Applicant's property was transferred to the creditor. (Tr. 68; AE C) On August 3, 2022, the VA wrote Applicant a letter which stated:

Please be advised, the property which secured this loan was sold to the noteholder at foreclosure sale on [in 2016] for \$154,315.80. At the time of the foreclosure sale, the total outstanding loan balance was \$205,819.72. The proceeds from the foreclosure sale were applied to this balance, as well as a claim under loan guaranty from the Department of Veterans Affairs in the amount of \$46,805.00, but those payments were not sufficient to fully pay the outstanding balance resulting in a deficiency balance of \$4,698.92.

VA Regulation 38 CFR 36.4324(e) provides upon payment of a claim to the lender following termination of the account, VA, to the extent of guaranty paid, has the right to establish and collect this debt against you. However, because this was a Guaranteed Indemnity Fund Loan (GIF) that was established after December 1998, VA is not pursuing such collection. (AE R)

On April 29, 2019, the VA indicated the amount of VA loss was \$45,931. (AE B) The creditor refunded two months of insurance payments from Applicant's escrow account to Applicant. (Tr. 38-39) Applicant's mortgage debt is resolved. (Tr. 39; AE M) He is credited with mitigating this debt.

In 2020, Applicant purchased another house in a different state. (Tr. 54) His current mortgage is \$284,742, and the VA has guaranteed repayment. (Tr. 67; AE D) His monthly payment for mortgage, taxes, and insurance is \$1,715; it is automatically paid from his bank account; and his mortgage account is current. (AE D) The mortgage company estimated his home value is \$459,000; his equity is \$174,258; and he could borrow an additional \$73,258. (AE D) His car loan is paid off. (Tr. 57) His annual net pay is \$67,000. (Tr. 64) He has about \$2,000 monthly remaining after all expenses are paid. (Tr. 62)

SOR ¶ 1.b alleges a charged-off credit-card debt for \$8,174. SOR ¶ 1.c alleges a credit-card debt in collection for \$7,158. SOR ¶ 1.d alleges a charged-off credit-card debt for \$1,466. Applicant used these three credit cards for the expenses of daily living, and he admitted his responsibility for the three debts. (Tr. 42, 46, 48; SOR response) On October 4, 2018, he told an Office of Personnel Management (OPM) investigator that he planned to pay these three debts in 2019 or as soon as possible. (Tr. 44; GE 2 at 8-10) However, after he made this promise to the OPM investigator, he needed funds to assist his mother and grandmother. (Tr. 44) He also moved twice after his OPM interview. (Tr. 48-49, 54) He did not make any payments to address SOR ¶¶ 1.b, 1.c, and 1.d after his OPM interview. He did not provide details about his financial assistance to his mother and grandmother or the additional expenses from moving to different residences.

Applicant currently has funds available to pay the debts in SOR ¶¶ 1.b, 1.c, and 1.d. He has a total of about \$20,000 in his checking and savings accounts; however, he did not believe it was a good idea to pay these three debts before he knew the ramifications of paying them on his pending security clearance disposition. (Tr. 43, 46-47, 63; AE L) If he used his available funds to pay his SOR debts, and he lost his security clearance and employment, he would be in a financial hardship because the funds expended would be unavailable while he was unemployed. (Tr. 43, 46, 71) After his hearing, he indicated in an email that he would pay the three delinquent debts if his security clearance is not revoked with the funds that were already available to settle the three debts. (AE J; AE L)

SOR ¶ 1.e alleges an account placed for collection for \$151. Applicant owed this debt for Internet services for about seven years. (Tr. 50-51) He paid this debt on June 14, 2022. (Tr. 52)

SOR ¶ 1.f alleges a utility account placed for collection for \$773. Applicant admitted responsibility for this debt; it was delinquent for about six years; and he paid it on July 8, 2022. (Tr. 53; AE X)

Applicant has not received formal financial counseling. (Tr. 55) He has received financial advice over the years on an ad hoc basis. (Tr. 55) On August 1, 2022, his credit scores from the three primary credit reporting companies were 690, 705, and 712. (AE K) He has \$45,445 in his 401(k) account. (AE Q) He is currently paid \$32 an hour. (AE T)

Applicant explained why he did not resolve the debts in SOR ¶¶ 1.b, 1.c, and 1.d as follows:

Like I said, I could have settled the three other debts that are here for any amount along the way, but I wasn't sure that I was going to be able to keep my job if I had done so. So I really wanted to get some guidance from either the security administration or somebody that had better knowledge than myself what I really needed to do, and I was more than willing to do that, just as I have been my whole career. But no one that I could reach out to could give me any guidance as far as this goes. I felt like I was just kind of left out here floundering a little bit, I think. (Tr. 76)

Applicant provided an event timeline in which he said:

Every attempt of mine to gain any information about the status of my clearance was met with messages stating that it was still under review month after month [since] 2018 and that I should remain prepared for the worst. Such was the basis for my decision to retain the funds I had accumulated to avoid the aforementioned possibility that I would be unable to financially support myself after a possible termination of my employment as is what I believe to have been the most responsible decision possible given the circumstances. (AE V at 13)

After his hearing, Applicant indicated in an email that he recently accrued sufficient funds to pay the three delinquent debts, and he closed with the following comments:

I would further argue that to expend these funds at any time since the government originally expressed its possible decision to revoke my clearance, or during these proceedings, whether to clear these debts or for any other reason would have actually represented precisely the type of decision making and irresponsible acts that I am accused of and under review for in the first place. I maintain that I did not act in bad faith to my creditors in the first place, and I do not intend to do so now. It has also been explained to me more than once that my paying off these debts at any time after my interview would not have necessarily secured my retention of my clearance, which further supports my risk assessment and decision to ensure that I do not place myself in any further financial peril should I lose my employment as a result of this evaluation. I have had to live under these incredibly stressful circumstances since these debts occurred, and have carried their weight through numerous setbacks to reach my current improved financial state and do not intend to let anything put me back in position again. I find myself in the position to have built up my finances only to be possibly set back to start over after all of the work I have had to put forth to regain any sort of financial comfortability after my experienced setback surrounding 2014.

I would again ask all reviewing these proceedings to observe my 25 years of credit history and honorable and decorated military service to recognize these events were not indicative of my overall judgement, or reliability and that had it not been for the hardships including the lack of rental payments for the home I had to leave behind in [specific state omitted] to gain employment after retiring from active duty, I would have been quite capable of continuing to pay my debts as required as I had throughout my entire adult life before, and in the years since this isolated incident. After all, many years of this service were completed as a single person managing all finances independently without any spouse or agent to monitor my finances while I was deployed in various hostile areas of operation away from access to any type of communications that would allow me to access my accounts during those deployments. I would also note that all of the credit card accounts in question were opened up to 10 years prior to the issues I experienced and they had always been paid and up to date prior to this time period as evident by the maturity of the accounts. (see government exhibit credit report for dates accounts were established) (AE J)

Character Evidence

Three of Applicant's friends and coworkers and his supervisor provided character statements. (AE F; AE G; AE I; AE O) The general sense of their statements is that Applicant is dedicated, loyal, diligent, honest, trustworthy, and professional. He adhered to the "Air Force core values Integrity First, Service Before Self, and Excellence in All We Do." (AE G) Their statements support his continued access to classified information. He has also received annual pay increases. (AE T)

Applicant was deployed 11 times and completed numerous training courses during his Air Force career. (Tr. 73; AE H) He received the following Air Force (AF) awards: Meritorious Service Medal; AF Commendation Medal with 2 oak leaf clusters; AF Achievement Medal; Joint Meritorious Unit Award; Meritorious Unit Award with 3 oak leaf clusters; AF Outstanding Unit Award with Valor Device with 7 oak leaf clusters; AF Good Conduct Medal with 5 oak leaf clusters; National Defense Service Medal; Afghanistan Campaign Medal with 1 service star; Iraq Campaign Medal with 1 service star; Global War On Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; AF Overseas Ribbon Short; AF Expeditionary Service Ribbon with Gold Border with 7 oak leaf clusters; AF Longevity Service with 3 oak leaf clusters; AF NCO PME Graduate Ribbon with 1 oak leaf cluster; Small Arms Expert Marksmanship Ribbon with 1 service star; AF Training Ribbon; and NATO Medal. (AE H) The description of actions in his August 20, 2003 AF Achievement Medal indicates he was dedicated to his duties, and he made important contributions to the combat mission in Iraq. (AE H)

Applicant received treatment for anxiety and depression issues that "developed over the years of repeated and long-term deployments." (AE U) He believed his mental-health issues were due to his exposure to operations and environments during his Air Force career, especially when he was in Special Operations. (*Id.*) After retiring from the

Air Force he was able to end his use of prescribed medications to treat his anxiety and depression through alternative treatments and resiliency development. (*Id.*)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. See *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. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.”

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Id. (internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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;

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in

Egan, supra. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

Applicant experienced unemployment, separation, overseas deployment, his cohabitant’s illness, the need to support relatives, a tenant’s failure to pay rent, the need to move several times, and two divorces. These are circumstances largely beyond his control, which adversely affected his finances. However, “[e]ven if applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the judge could still consider whether applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Applicant is credited with mitigating the following SOR debts: ¶ 1.a for \$24,443 (paid by the VA); ¶ 1.e for \$151 (paid after his hearing); and ¶ 1.f for \$773 (paid after his hearing).

Another component under AG ¶ 20(a) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. He did not prove that he maintained contact with his SOR ¶¶ 1.b, 1.c, and 1.d creditors or that he made written offers to make partial payments to them. He is not credited with mitigating the debts in SOR ¶¶ 1.b (\$8,174), 1.c (\$7,158), and 1.d (\$1,466). His annual pay was essentially stable for the last seven years. He did not establish he was unable to establish a payment plan and make some payments to one or more of the three SOR creditors. See ISCR Case No. 14-03612 at 3 (Aug. 25, 2015) (“Indeed, even if a credit report states that a debt has been paid, that fact alone does not, in and of itself, resolve concerns arising from the dilatory nature of an applicant’s response to his debts or other circumstances that detract from an applicant’s judgment and reliability. In this case, the Judge commented on the absence of detailed evidence about how Applicant addressed his finances and reasonably had doubts about his clearance eligibility based on that lack of evidence”).

Applicant has excellent credit scores on his recent credit reports, and the delinquent debts in SOR ¶¶ 1.b, 1.c, and 1.d may have dropped off his credit reports. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The DOHA Appeal Board has explained why this is so:

[T]here is more than one plausible explanation for debts dropping off a credit report, such as the removal of debts due to the passage of time, and the absence of unsatisfied debts from an applicant’s credit report does not extenuate or mitigate an overall history of financial difficulties or constitute evidence of financial reform or rehabilitation.

ISCR Case No. 19-03757 at 3 (App. Bd. Aug. 18, 2021) (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)).

The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off. Applicant's failure to provide more evidence of debt resolution precludes mitigation of the charged-off debts on his credit report and debts dropped from his credit report.

Applicant's history of non-payment of three of his SOR debts has important security implications. See ISCR Case No. 20-01004 at 3 (App. Bd. June 28, 2021) ("Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance") (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)). Even if he paid the delinquent SOR debts after receipt of the SOR, this would not automatically mitigate security concerns.

[T]he timing of ameliorative action is a factor which should be brought to bear in evaluating an applicant's case for mitigation. 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.

ISCR Case No. 17-04110 at 3 (App. Bd. Sept. 26, 2019) (citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)). While payment of delinquent debts after receipt of the SOR does not necessarily guarantee approval of access to classified information, it would have shown some good faith and some belated efforts to comply with contracts in which he promised to repay borrowed funds.

One function of an SOR is to place an Applicant on notice of a particular security concern, such as finances and delinquent debts. A financially-based SOR provides an Applicant an opportunity to show good faith and establish payment plans, pay debts, or otherwise mitigate security concerns. An Applicant who is insensitive to the importance of expeditiously resolving security concerns may not diligently act to safeguard security.

Applicant did not establish that he was unable to make more progress sooner in the resolution of his SOR debts in ¶¶ 1.b, 1.c, and 1.d. There is insufficient assurance

that his financial problems are being resolved. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 44-year-old aircraft mechanic who has been employed by the same DOD contractor since 2015. He served in the Air Force from 1996 to 2014, and he received early retirement as a technical sergeant under the Government's Temporary Early Retirement Authority. He receives monthly Air Force retirement pay and medical benefits. He has held a security clearance for seven years while working for the DOD contractor, and there are no allegations of security violations.

Two of Applicant's friends and coworkers and his supervisor provided character statements. The general sense of their statements is that Applicant is dedicated, loyal, diligent, honest, trustworthy, and professional. He adhered to the "Air Force core values Integrity First, Service Before Self, and Excellence in All We Do." (AE G) Their statements support his continued access to classified information.

Applicant was deployed 11 times during his Air Force career. He received numerous Air Force awards and completed many training courses. He served tours in Iraq and Afghanistan. The description of actions in his August 20, 2003 Air Force Achievement Medal lauds his dedication and contributions to the combat mission in Iraq.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances largely beyond his control. He is credited with mitigating the following SOR debts: ¶ 1.a (\$24,443); ¶ 1.e (\$151); and ¶ 1.f (\$773).

The evidence against grant of a security clearance is more substantial at this time. Applicant's annual pay was essentially stable for the last seven years. He failed to provide persuasive information to explain why he was unable to make greater progress sooner resolving the SOR debts in ¶¶ 1.b (\$8,174), 1.c (\$7,158), and 1.d (\$1,466). He admitted he had the funds available to resolve these three debts. He did not employ reasonable and prudent actions to resolve these debts after he received notice from the SOR. He did not show a track record of consistent payments to address these three debts. His financial history raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b, 1.c, and 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge