



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



In the matter of:)
)
) ISCR Case No. 20-03768
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

September 1, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline E (personal conduct), but failed to mitigate security concerns regarding Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

On March 4, 2020, Applicant completed and signed an Electronic Questionnaires for National Security Positions (SF-86) or security clearance application (SCA). On February 20, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (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.

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 Guidelines F and E.

On September 3, 2021, Applicant provided a response to the SOR, and he requested a hearing. On March 31, 2022, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On April 6, 2022, DOHA assigned the case to me. On April 6, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 27, 2022. The hearing was held as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 5, which I admitted without objection. Applicant testified and did not offer any exhibits into evidence. I held the record open until May 27, 2022, to afford Applicant an opportunity to submit additional evidence. (Tr. 63-65) Applicant timely submitted Applicant Exhibits (AE) A through C, which I admitted without objection. On May 5, 2022, DOHA received the hearing transcript (Tr.).

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 all of the SOR allegations, SOR ¶¶ 1.a through 1.k; and 2.a and 2.b. In his SOR response, he also provided mitigating information. His admissions are accepted as findings of fact.

Background Information

Applicant is a 32-year-old warehouse specialist, who has been employed by a defense contractor since September 2018. This is his first application for a security clearance, and he seeks a clearance to enhance his position within his company. (Tr. 12-14, 60-61; GE 1)

Applicant graduated from high school in June 2008. (Tr. 14-15) He was previously married from June 2010 to December 2015. That marriage ended by divorce. Applicant remarried in May 2016. (Tr. 15-17; GE 1) He has three minor children, and a minor stepdaughter. Applicant's wife receives child support for his stepdaughter. Applicant's oldest child is from his first marriage. He pays his former spouse \$137 a month in child support for that child. His second child is from a former relationship, and he provides for that child's health insurance, but does not pay child support. Applicant has shared custody with the mothers of his two oldest children. His third child was born during his current marriage. All four children live with Applicant and his wife. His spouse does not work outside the home. (Tr. 17-20, 40, 62-63; GE 1)

Financial Considerations

The SOR lists 11 allegations under this concern. SOR ¶¶ 1.a through 1.k allege various debts, all of which are discussed in further detail below. These allegations are established by his March 4, 2020 SF-86, his June 26, 2020, December 15, 2020, and March 31, 2022 credit reports; his Office of Personnel Management (OPM) Report of

Investigation conducted from July 2, 2020 to July 14, 2020 to include an OPM Personal Subject Interview (PSI) on July 9, 2020; and his September 3, 2021 SOR Answer.

Applicant stated that he got into financial difficulty “around a year after my first -- or my divorce” . . . [s]o around 2016.” (Tr. 20-21) He found it financially challenging to maintain two residences after he moved out of the residence he shared with his first wife. He opened up “a couple of cards -- credit cards . . . and I wasn’t making enough money to balance all those, and it just started getting in the hole from there and it just got deeper and deeper.” (Tr. 21-22)

During Applicant’s July 9, 2020 OPM PSI, he stated that he was willing and able to pay all his bills and debts. He committed to look into any unknown accounts and pay any applicable balance within two years. The OPM investigator gave Applicant the opportunity to provide documentation regarding his financial delinquencies. The investigator noted that Applicant failed to provide documentation during his interview or subsequent to his interview to corroborate his disagreement with accounts in his credit report. (GE 2) Later, Applicant stated that he has “taken care of everything that I promised I would. The other debts that are listed, I admitted to them and then I have not done anything towards those because they are so – they are past the statute of limitations, and I’ve taken care of the ones that were on my credit as collections – that were outstanding.” (Tr. 22-23)

The February 20, 2021 SOR alleges 11 delinquent debts totaling approximately \$22,850 as follows:

SOR ¶ 1.a alleges a \$6,936 charged-off debt for a voluntary vehicle repossession. Applicant was unable to remain current on his car payments, and he voluntarily returned his car to the creditor in 2018. (Tr. 23-25) He has made no effort to address this debt. (Tr. 24) **DEBT NOT RESOLVED.**

SOR ¶ 1.b alleges a \$3,784 charged-off debt for a leased automobile. Applicant was unable to remain current on his automobile lease, and he voluntarily returned the automobile to the dealer in 2018. He has made no effort to address this debt. (Tr. 24-28) **DEBT NOT RESOLVED.**

SOR ¶ 1.c alleges a \$3,634 charged-off debt for a jewelry store account. Applicant bought jewelry for his former spouse “here and there.” He made his last payment in 2017. He has made no effort to address this debt. (Tr. 28-29) **DEBT NOT RESOLVED.**

SOR ¶ 1.d alleges a \$2,794 charged-off department store account. He opened this account when he got divorced and used it “for groceries or clothing for my kids. And then I had a high credit limit and it got away from me, over my head.” He made his last payment in 2016. He has made no effort to address this debt. (Tr. 29-30) **DEBT NOT RESOLVED.**

SOR ¶ 1.e alleges a \$2,157 charged-off furniture store account. Applicant opened this account to buy furniture. He made his last payment in 2016. He has made no effort to address this debt. (Tr. 30-31) **DEBT NOT RESOLVED.**

SOR ¶ 1.f alleges a \$975 charged-off kitchenware store account. He bought “pots and pans, a matched set, and stuff like that with it.” He made his last payment for this account in 2016. He has made no effort to address this debt. (Tr. 31-32) **DEBT NOT RESOLVED.**

SOR ¶ 1.g alleges a \$749 toy store collection account. Applicant provided a letter in his SOR Answer from the creditor dated September 8, 2021, stating that this account had been paid in full. (Tr. 32-34; SOR Answer; GE 4) **DEBT RESOLVED.**

SOR ¶ 1.h alleges a \$749 charged-off department store credit card account. He made his last payment on this account in 2016. Up until his hearing, Applicant made no effort to address this debt. Post-hearing, Applicant submitted a letter from the creditor dated April 27, 2022, stating that this account had been settled for the lesser amount of \$375. (Tr. 33-34; AE C) **DEBT RESOLVED.**

SOR ¶ 1.i alleges a \$680 credit card collection account. Applicant provided a letter in his SOR Answer from the creditor dated September 8, 2021, stating he had “resolved [his] balance of \$680.” (Tr. 34-35; SOR answer) **DEBT RESOLVED.**

SOR ¶ 1.j alleged a \$297 home improvement store credit card collection account. Applicant provided a letter in his SOR Answer from the creditor dated September 6, 2021, stating that “[t]his account was satisfied on 04-05-2021 and you have no further obligation on this debt.” (Tr. 35-36; SOR Answer) **DEBT RESOLVED.**

SOR ¶ 1.k alleged a \$105 charged-off credit union “cash advance” account. Applicant provided a receipt in his SOR Answer from the credit union dated September 3, 2021, stating that this account was paid in full. (Tr. 36-37; SOR Answer) **DEBT RESOLVED.**

Applicant stated that he had no intention of addressing any of the unpaid debts because, “I was advised (by a family friend) that they are past the statute of limitations. So if I were to reopen all of these, they would go back onto my credit and put in collection accounts, which I heard is more.” (Tr. 37) Department Counsel advised Applicant that in the security clearance process, the Government was not just concerned about legal technicalities of collectability or not, but rather whether an applicant addresses things for which they are responsible. (Tr. 38) I reiterated what Department Counsel advised Applicant adding that waiting until his debts fell off his credit report was not a responsible way to address his financial situation. (Tr. 58-59, 66-69) I inquired whether he wanted to leave things as they were or take additional corrective action. He replied, “No, if it will definitely help me, I will definitely take care of stuff.” (Tr. 58)

When asked whether he had the means to address his delinquent debts, Applicant responded, “if it will better my chances for my future, then, yes, I will definitely take

actions.” (Tr. 38-39) Applicant added, that ever since his OPM PSI, “I have taken care of the ones (debts) that I saw were in outstanding collections since the interview and all my current revolving debt that I have is on time and paid in full every time.” (Tr. 39) Applicant has not received any financial counseling. He discussed financial counseling with his family and friends, but they told him it would “cost a lot of money just to get some financial counseling.” (Tr. 39, 44-45) He stated that he has made changes in his spending habits to include spending “what I know I can spend.” He has also placed small lines of credit on the credit cards that he does have. (Tr. 39-40)

Applicant’s monthly take home pay is “[a]round \$3,200.” His monthly rent is \$1,250, his monthly car payments are \$750 for a 2019 Chevrolet Suburban, his monthly internet service is \$80, his monthly child support garnishment is \$137, and he estimates his monthly utilities are approximately \$150. He estimated his annual salary to be \$58,000. Applicant’s wife buys groceries which average \$300 to \$400 a month with her child support that she receives from the father of her child. Applicant estimates his monthly credit card bills are approximately \$100. He usually spends his entire take home pay to cover his bills. Any money that he has left after paying his bills goes into his savings account. Applicant has approximately \$3,500 in his savings account. He has a 401(k) retirement account through his employer, but he does not know the balance of his account. (Tr. 40-44, 61)

Personal Conduct

The SOR lists two allegations under this concern. SOR ¶¶ 2.a and 2.b allege two terminations from two separate employers in 2017 and 2018, which are discussed in further detail below. These allegations are established by his March 4, 2020 SF-86, GE 1 and 2, his September 3, 2021 SOR Answer, and his hearing testimony. Applicant initially self-reported both of these allegations on his March 4, 2020 SF-86. The only evidence developed regarding these two allegations was derived from Applicant’s March 4, 2020 SF-86, his July 9, 2020 OPM PSI, and his hearing testimony. There is no Government evidence to refute or corroborate Applicant’s version of the facts regarding these two terminations.

SOR ¶ 2.a alleges that Applicant was terminated in April 2018 from his position as a maintenance technician at an apartment complex for violating the terms of his employment by participating in an on-site, after-hours party. Applicant had a job at this apartment complex as a resident maintenance technician for which he received an hourly wage and lived at the complex at a reduced cost. (Tr. 49-50)

While employed at this apartment complex, Applicant had befriended “a couple of my neighbors, and they weren’t the best neighbors to everyone else.” (Tr. 50) These neighbors had an after-hours party that became loud and boisterous. Applicant had been invited to attend this party, but declined because he had to take his wife to the hospital for induced labor. Applicant was later accused by one of the apartment residents of attending that party. Applicant informed his supervisor that he was at the hospital with his wife at the time of this boisterous party. The complaining neighbor showed the apartment complex management pictures of Applicant that she had purportedly taken of him

attending this party. However, Applicant pointed out that the pictures were of him attending a daytime children's birthday party at the neighbors versus attending the boisterous party in question. (Tr. 50-51, 55-58)

The terms of Applicant's employment did not prohibit him from socializing with his neighbors, but preclude his off-duty behavior from participating in or causing a disturbance. Applicant protested his termination with a "maintenance supervisor," but was informed by the supervisor, "My hands are pretty much tied." (Tr. 51) Applicant was unable to offer an explanation as to why this complaining neighbor tried to implicate him stating, "To be honest, I'm not sure, but one – but from the angles of the pictures that they're coming from, it was – this lady – and I was really nice always to her and she would always ask for me to come into her apartment, so I'm not sure what I did to her. . . ." (Tr. 52, 55-58) Applicant had never been counseled or received formal write-ups while employed at this apartment complex. (Tr. 52) Applicant cannot understand why he had these issues because as he explained, "I'm a very type of people person, too, but I guess that's how my family is." (Tr. 53)

Applicant was given the choice of being terminated or leaving by mutual agreement. Applicant chose to leave by mutual agreement because he already had a better paying job at a plumbing company and by leaving voluntarily his supervisor offered to act as a reference for him. Note – Applicant's testimony regarding this incident is consistent with what he told the investigator during his July 9, 2020 OPM PSI. (GE 2)

SOR ¶ 2.b alleges that Applicant was terminated in February 2017 from his position as a maintenance technician at an apartment complex for stealing a refrigerator. Applicant had a job at this apartment complex as a resident maintenance technician for which he received an hourly wage and lived at the complex rent-free. He had worked there for "about two years." Management was remodeling the complex with all new appliances, flooring, and lighting. The appliances removed from the apartments were placed by the dumpster to be hauled away by the "local junk guy." Also, various people would "come and just pick 'em up and take 'em home or whatever they did with 'em – sell 'em." (Tr. 45-47, 53-55)

Applicant's father saw the old refrigerators sitting by the dumpster and asked him if it would be possible for him to secure one of the old refrigerators for him to use in his garage. Applicant assured his father that he could do that and one Friday after work he loaded an old refrigerator onto his truck and drove it to his father's house. Applicant's manager called him into the office the following week and informed him that one of the tenants had taken a picture of Applicant driving off the property with the refrigerator on his truck. Applicant acknowledged that was indeed correct and that he had removed an old refrigerator by the dumpster and taken it to his father's garage. At that point, Applicant's manager terminated him for removing stolen property from his worksite and gave him 30 days to vacate his apartment. (Tr. 46-47, 53-55)

Applicant stated that it was common practice to remove parts from old appliances placed by the dumpster for future use. Applicant contested his termination with his manager to no avail. Applicant gleaned from the manager that it "looked bad" for an

employee who lived there to be removing a refrigerator from the property. No police report was filed. Applicant had never been accused of stealing before. After that, Applicant “didn’t argue or fight ‘em on it” and moved out within 30 days. (Tr. 48-49, 53-55) Note – Applicant’s testimony regarding this incident is consistent with what he told the investigator during his July 9, 2020 OPM PSI. (GE 2)

Character Evidence

Post-hearing, Applicant submitted two work-related reference letters from his production control managers. Both managers highly endorse Applicant. They describe him as highly motivated, trustworthy, dependable, competent, and hard-working. They view him as an upwardly mobile employee capable of greater responsibility. Both managers recommend Applicant for a security clearance. (AE A, AE B)

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

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 a financial shortfall around the time of his divorce in 2016 and found it difficult, if not impossible, to maintain two households on his income. In an attempt to remain afloat, he opened up credit card accounts to cover his expenses; however, he was unable to remain current on those accounts. These are circumstances largely beyond his control, which adversely affected his finances.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Another component under AG ¶ 20(a) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. There is no record evidence that Applicant made contact with any of his creditors for his unresolved debts, but rather chose to wait for them to "fall off his credit report."

Applicant is credited with mitigating the following SOR debts: ¶ 1.g for \$749; ¶ 1.h for \$749; ¶ 1.i for \$680; ¶ 1.j for \$297; and ¶ 1.k for \$105. AG ¶¶ 20(b) and 20(d) are partially applicable as it pertains to these delinquent debts. The personal and family problems that Applicant described surrounding his divorce in the 2016 timeframe played a role in his ability to remain current on his financial obligations. However, Applicant does not receive full credit under either of these two mitigating conditions because of his failure to act responsibly under the circumstances. AG ¶¶ 20(c) and 20(e) are not applicable.

Applicant's history of non-payment of several 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)).

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 compliance with promises to repay borrowed funds and to expeditiously resolve 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 several of his SOR debts. 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.

Personal Conduct

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes three conditions that could raise security concerns and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that that individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment,

untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The record evidence establishes AG ¶¶ 16(c), 16(d), and 16(e) as potentially disqualifying conditions. This evidence shifts the burden to Appellant to establish mitigation. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

AG ¶ 17 includes three conditions that could mitigate the security concerns arising from Applicant's personal conduct:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(c), 17(e), and (g) are applicable. These two terminations occurred in February 2017 and April 2018. The 2017 termination involved "stealing" a refrigerator and the 2018 termination involved attending a boisterous after-hours party in violation of his terms of employment. Since September 2018, Applicant has been gainfully employed by his present defense contractor employer.

I note that Applicant self-reported these terminations on his March 4, 2020 SF-86. He discussed or acknowledged them during his July 9, 2020 OPM PSI, in his September 3, 2021 SOR Answer, and during his hearing testimony. His version of the facts remained consistent. The Government did not present any evidence to rebut or contradict Application's version of these two terminations. Lastly, I found Applicant's testimony to be

credible. He did not contest his terminations in any formal manner choosing rather to move on and put them behind him. That said, given the facts surrounding each of these terminations, it appears the circumstances surrounding each termination was relatively minor and sufficient time has elapsed without any similar recurrence.

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 Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 32-year-old warehouse specialist, who has been employed by a defense contractor since September 2018. He is a first-time applicant for a security clearance, and he seeks a clearance to enhance his position within his company. He is married and has four minor children living in his home, three of his own children of which he shares custody with two separate mothers, and a stepdaughter. His management holds a high opinion of him and recommends him for a clearance.

Although Applicant mitigated the personal conduct concerns, he was unable to mitigate the financial considerations concerns. The February 20, 2021 SOR alleges 11 delinquent debts totaling \$22,850. Applicant did not make any payments after receipt of the SOR to address six SOR debts. Based on advice received from friends and family, his strategy has been and apparently remains to wait for his debts to fall off his credit report. Department Counsel and I explained to him that this is not an acceptable means of debt resolution and does not establish mitigation for security clearance purposes. His unresolved debts have remained delinquent since 2016.

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 mitigated personal conduct security concerns; however, he 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
Subparagraphs 1.a - 1.f:	For Applicant
Subparagraphs 1.g – 1.k:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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.

ROBERT TUIDER
Administrative Judge