



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



In the matter of:

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ISCR Case No. 20-02799

Applicant for Security Clearance

Appearances

For Government: Gatha L. Manns, Esq., Department Counsel

For Applicant: Ronald C. Sykstus, Esq.

06/03/2022

Decision

HARVEY, Mark, Administrative Judge:

The statement of reasons (SOR) alleges 12 delinquent debts totaling \$39,266. Applicant established a payment plan in 2019, and he consistently made \$500 or more monthly payments into his plan. Five SOR debts are paid, and seven SOR debts are in established payment plans. His overall financial records establish his financial responsibility. Guideline F (financial considerations) security concerns are mitigated. Access to classified information is granted.

History of the Case

On November 18, 2019, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1). On April 14, 2021, 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) On September 15, 2021, Applicant provided a response to the SOR and requested a hearing. (HE 3) On November 18, 2021, Department Counsel was ready to proceed.

On February 18, 2022, the case was assigned to me. On March 7, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 17, 2022. (HE 1) The hearing was held as scheduled.

Department Counsel offered 5 exhibits into evidence, and Applicant offered 18 exhibits into evidence. (Transcript (Tr.) 16-29; GE 1-GE 5; Applicant Exhibit (AE) A-AE Q) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 16-29) On June 1, 2022, DOHA received a transcript of the hearing. Applicant provided one exhibit after the hearing, and it was admitted into evidence without objection. (AE R) The record closed on June 20, 2022. (Tr. 81)

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.a through 1.i. (HE 3) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 35-year-old test engineer, and he has worked for his current employer since December 2019. (Tr. 31-32) In 2015, he married, and he has a two-year-old child. (Tr. 32-33) He has never served in the military. (GE 1) In 2005, he graduated from high school, and in 2015, he received a bachelor's degree in industrial and systems engineering. (Tr. 34, 37; AE I) He successfully completed courses at several universities. (AE J-AE M; AE O) His resume provides additional details about his professional accomplishments. (AE Q)

Financial Considerations

Applicant was unemployed from 2013 to 2015 while attending college. (GE 1; SOR response) From 2016-2018, Applicant and his spouse accrued credit card debt when they were both employed. (Tr. 53) They used credit cards to support themselves and spent more than they should have on eating at restaurants and other activities. (Tr. 42) His vehicle's transmission failed, and he needed to purchase a new vehicle. (Tr. 43) He had expensive dental bills. (Tr. 69) His spouse has not been employed outside their home for about three years. (Tr. 40) He acknowledged that he failed to budget and limit expenses resulting in increased debt. (Tr. 50-51, 54)

Applicant disclosed 11 delinquent debts on his November 18, 2019 SCA, and he indicated he started resolving his delinquent debts using a debt resolution company (DRC) in April 2019. (GE 1) Applicant's SOR alleges 12 delinquent debts totaling \$39,266, of the following amounts: \$10,211; \$5,223; \$4,861; \$4,353; \$3,465; \$2,819; \$2,631; \$2,307; \$1,354; \$987; \$579; and \$476. The first 11 debts are charged-off credit cards or loans from lending institutions, and the last debt is a collections account owed to a telecommunications company.

Applicant entered into a contract with DRC in January 2019. (Tr. 57; SOR response; AE A) Before January 2019, Applicant was making the minimum payments on his credit cards, and DRC advised him to stop making payments. (Tr. 45, 55-56) In March 2019, Applicant began paying DRC \$500 monthly. DRC contacted the creditors and established or attempted to establish payment plans with the creditors. (Tr. 45; AE A; AE R) At the time of the hearing, Applicant was paying \$580 monthly to DRC. (Tr. 45) Applicant paid off his spouse's vehicle in April 2022, and he intends to increase his monthly payment to DRC to complete the payment plan sooner than the scheduled completion date in about two years. (Tr. 45, 47-48) He received credit counseling from DRC. (Tr. 44, 59-60) His budget indicates he has net annual income of about \$57,000. (Tr. 60-61; AE R) He is making the following monthly payments: purchasing company stock for \$350; putting \$350 into a 401k account; and saving \$140. (AE R) The 401k contribution of \$350 includes a portion from his employer, and the stock purchase is at a discounted price. (Tr. 58) Applicant and his family live with his spouse's grandmother in her house. (Tr. 48) He pays \$500 monthly for rent. (Tr. 48) He intends to purchase the house once their other debts are paid. (Tr. 48)

DRC paid the settlement amounts for three SOR debts, and they are resolved: ¶ 1.b (balance at settlement: \$5,605; settled for \$2,803); ¶ 1.h (balance at settlement: \$2,307; settled for \$923); and ¶ 1.i (balance at settlement: \$1,060; settled for \$583). (AE R)

DRC has established payment plans acceptable to the creditors for seven SOR debts (AE R):

SOR ¶	Balance Owed at Settlement	Number of Payments Made/Total Payments to Settle Debt	Balance Remaining To Be Paid To Settle Debt
1.a	\$9,637	7/24	\$4,529
1.c	\$4,861	10/12	\$2,436
1.d	\$4,354	9/24	\$1,742
1.f	\$2,819	9/36	\$1,494
1.g	\$2,632	24/36	\$1,395
1.j	\$988	17/24	\$523
1.k	\$579	8/12	\$300
Total	\$25,870		\$12,419

The creditor for the debts in SOR ¶¶ 1.e (\$3,465) and 1.i (\$1,354) refused to work with DRC. (Tr. 46) The creditor filed suit in small claims court. (AE B-AE C) In February

2022, Applicant paid the creditor \$3,617, and in March 2022, the judge granted the creditor's motion to dismiss the lawsuit. (Tr. 47; AE B-AE F)

Applicant's student loans total about \$74,000. (Tr. 63, 68) Before the COVID-19 pandemic-related deferment, his student loans were in "pays as agreed status." (GE 2) He paid off a car loan, and he has sufficient income to make his student-loan payments when the deferment ends. (Tr. 63-64) He timely files his state and federal income tax returns. (Tr. 67) He does not owe any delinquent taxes. (Tr. 67)

Applicant's 2021 performance evaluation from his employer was excellent. (AE H) He loves his employment, and he expects to have continued success at work. (Tr. 49, 70) He received a pay raise in the last 12 months, and he increased his monthly payment to DRC to \$580. (Tr. 63)

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 revised 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 and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. 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 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.

(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 while in college; his spouse was unemployed after their child was born; they needed to replace their vehicle; and Applicant had dental expenses. 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)).

Another component 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 several of his creditors or that he made offers to make partial payments to them before engaging DRC to handle his delinquent debts.

The SOR alleges 12 delinquent debts totaling \$39,266. One debt was in a collections status, and the other 11 debts were charged off. In January 2019, Applicant engaged DRC to resolve his debts. In April 2019, Applicant began paying DRC \$500 monthly in accordance with his DRC contract. DRC paid three SOR debts; Applicant separately paid two SOR debts; and the remaining seven SOR debts are in established payment plans.

The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness,

prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (internal citation and footnote omitted) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

AG ¶¶ 20(a) though 20(d) apply. Based on Applicant’s credible and sincere promise to timely pay his debts, future new delinquent debt “is unlikely to recur and does not cast doubt on [Applicant’s] current reliability, trustworthiness, or good judgment,” and “there are clear indications that the problem is being resolved or is under control.” His payments to DRC and his history of paying his student loans showed good faith. He generated a budget and received financial counseling. He has sufficient income to keep his debts in current status and to continue making progress paying DRC until all of the SOR debts are paid. He has a good financial plan for the future, and he has shown since March 2019 that he has the self-discipline to accomplish his financial goals. His efforts are sufficient to mitigate 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 35-year-old test engineer, and he has worked for his current employer since December 2019. In 2015, he received a bachelor’s degree in industrial and systems engineering. He successfully completed courses at several universities. His resume provides additional details about his professional accomplishments.

Several circumstances beyond his control adversely affected his finances. He was somewhat irresponsible in the handling of his finances when he accrued more credit card debt than was necessary. The SOR alleges 12 delinquent debts totaling \$39,266. Five of the debts were settled and the other seven debts are in established payment plans. He is on schedule to pay the remaining \$12,419 in about two years. He plans to increase his monthly payments to resolve the DRC plan sooner than scheduled.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt re-payment. Applicant was forthright, candid, sincere, and credible in his presentation at his hearing. I am confident he will maintain his financial responsibility.

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)).

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 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: FOR APPLICANT

Subparagraphs 1.a through 1.l: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge