



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



In the matter of:)
)
) ISCR Case No. 21-02603
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

September 16, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On April 24, 2020, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 25, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DCSA CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On February 3, 2022, Applicant answered the SOR (Answer) and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 16, 2022, was provided to him by letter dated March 22, 2022. On April 4, 2022, Applicant received the FORM. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant was afforded a period

of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a written statement that I marked as Item 7 (FORM response). I received Items 1 through 7 into evidence. On June 15, 2022, the case was assigned to me.

Findings of Fact

Background Information

Applicant is a 34-year-old senior help desk technician employed by a defense contractor since February 2019. He seeks to retain his secret security clearance, which is a requirement of his continued employment. (Items 3, 7)

Applicant graduated from high school in June 2007. He has attended community college from August 2008 to the present, but has not yet earned a degree. (Item 3) He served in the U.S. Navy from November 2011 to June 2019, and was honorably discharged. For four of those eight years, he served on submarines and held a Top Secret clearance. He was married from July 2010 until that marriage ended by divorce in July 2014. He has a nine-year-old child for whom he pays \$655 in monthly child support. (Items 3, 4, 7)

Financial Considerations

Applicant's 10 delinquent SOR debts totaling \$32,027 are established by his April 24, 2020 SF-86; his Office of Personnel Management (OPM) background investigation conducted from November 24, 2020, to December 8, 2020, containing his November 24, 2020 OPM Personal Subject Interview (PSI); his September 17, 2020, and May 18, 2021 credit reports; and his February 3, 2022 SOR Answer. (Items 3 – 7)

Applicant explained during his November 24, 2020 OPM PSI that, “[a] lot of [his] financial problems began after he got divorced because [his] former wife handled his finances.” He added that he was, “young and dumb,” and “didn’t think there would be consequences for not paying his debts as agreed.” (Item 3) He added in his FORM response that he was left with the “large burden of (marital) debt” following, “a fairly acrimonious divorce.” (Item 7) During that November 24, 2020 OPM PSI, the investigator discussed Applicant's debts in detail with him. Applicant gave assurances during that interview that he would take the necessary corrective action to address his delinquent accounts. (Item 4)

In his February 3, 2022 SOR Answer, Applicant included a recently executed agreement dated February 2, 2022, with a debt consolidation company (DCC) That agreement with the DCC included most, but not all of Applicant's SOR debts in a debt consolidation plan (DCP). (Item 2) Apart from listing certain debts in the DCP, the DCC did not provide any update regarding the status of Applicant's debts such as payment progress, settlement, or disputes. (Item 2)

The following is a summary of Applicant's 10 SOR debts and their current status.

SOR ¶ 1.a – Charged-off automobile loan in the amount of \$15,829. Applicant admitted the allegation. This loan was for a vehicle that Applicant voluntarily surrendered to the creditor in 2014. This debt is not included in his DCP. Applicant stated that the “[creditor] had not provided the right documentation (to) [DCC] at the time of writing the current plan. I will continue to work with them until this (is) resolved.” (Items 2, 4) DEBT NOT RESOLVED.

SOR ¶ 1.b – Collection personal loan account in the amount of \$4,481. Applicant admitted his allegation. This is the same creditor listed in SOR ¶ 1.d, *infra*. Applicant took two personal loans out with this loan company in approximately 2013, after his divorce, to help repair his ex-wife's vehicle. His ex-wife had agreed to pay him back, but failed to do so. Applicant stated that he was unsuccessful in negotiating a settlement with the creditor. This debt is included in his DCP. The DCP does not indicate whether any progress has been made in resolving this debt. (Items 2, 4) DEBT NOT RESOLVED.

SOR ¶ 1.c – Collection student loan account in the amount of \$4,419. Applicant admitted this allegation. This is the second of two loans with same creditor listed in SOR ¶ 1.e, *infra*. This debt is not included in Applicant's DCP. In 2016, Applicant stated that he requested the Department of Education (DoED) to place his education loans in forbearance while he was deployed outside of the United States, “because it would be difficult for him to make the payments while deployed.” Applicant has two student loan collection accounts with DoED that are alleged in his SOR. See SOR ¶ 1.e, *infra*. In January 2017, Applicant called DoED and was informed that his loans had not been placed in forbearance, but had been placed in collections. He was further informed that the DoED would use his tax refunds to recoup his loan balance. Applicant's 2019 tax refund was applied to his loan balance; however, “due to the conditions of the CARES Act, the money was returned to [Applicant].” Applicant then contacted DoED, and was informed that DoED did not know whether he would still be responsible for the loans. He realizes that his student loans remain on his credit report and during his OPM PSI, he committed to calling DoED and make arrangements to pay the loans off in full. In Applicant's SOR Answer, Applicant stated, “Working with the U.S. DEPARTMENT OF EDUCATION. Current plan is I surrender my tax returns until such time as it is paid in full.” (Items 3, 6) The FORM does not contain any documentation that Applicant's student loans are being addressed. DEBT NOT RESOLVED.

SOR ¶ 1.d – Collection personal loan account in the amount of \$2,558. Applicant admitted this allegation. This is the second of two loans from the same creditor that is discussed in SOR ¶ 1.b, *supra*. DEBT NOT RESOLVED.

SOR ¶ 1.e – Collection student loan account in the amount of \$1,751. Applicant admitted this allegation. This is the second of two loans with the same creditor that is discussed in SOR ¶ 1.c, *supra*. DEBT NOT RESOLVED.

SOR ¶ 1.f – Charged-off line of credit account in the amount of \$584. Applicant admitted this allegation. Applicant opened this line of credit when he was selling items on a popular internet site. This debt is not included in his DCP. Applicant stated that the, “[creditor] had not provided the right documentation (to) [DCC] at the time of writing the current plan. I will continue to work with them until this (is) resolved.” (Items 2, 4) DEBT NOT RESOLVED.

SOR ¶ 1.g – Collection credit card account in the amount of \$466. Applicant admitted this allegation. This debt is included in Applicant’s DCP. The DCP does not indicate whether any progress has been made in resolving this debt. (Items 2, 4) DEBT NOT RESOLVED.

SOR ¶ 1.h – Collection apartment rental account in the amount of \$215. Applicant denied this allegation. Applicant stated this debt arose from an apartment he rented while he was in the Navy to cover carpet damage that exceeded his security deposit. Applicant stated that he paid this account in full on November 22, 2019, and provided documentation of same. He is attempting to have this debt removed from his credit report. (Items 2, 4) DEBT RESOLVED.

SOR ¶ 1.i – Collection credit card account in the amount of \$523. Applicant admitted this allegation. This debt is included in Applicant DCP. The DCP does not indicate whether any progress has been made in resolving this debt. (Items 2, 4) DEBT NOT RESOLVED.

SOR ¶ 1.j – Collection cable bill account in the amount of \$1,201. Applicant admitted this allegation. The cable company claimed that Applicant did not return his cable equipment when he vacated his apartment. Applicant explained that at the end of 2016 or early 2017, due to an approaching hurricane, the cable company instructed him to return the cable equipment to a non-cable company store. Applicant did as instructed, but did not obtain a receipt. This debt is not included in his DCP. Applicant stated that the, “[creditor] had not provided the right documentation (to) [DCC] at the time of writing the current plan. I will continue to work with them until this (is) resolved.” (Items 2, 4) DEBT NOT RESOLVED.

The only documentation that accompanied Applicant’s February 3, 2022 SOR Answer was a receipt for the debt in SOR ¶ 1.h and his DCP. Applicant did not provide any documentation that would demonstrate any progress he made towards paying, settling, or otherwise resolving his SOR debts apart from the one small debt discussed *supra*. Applicant did not enter into a relationship with his DCC until February 2, 2022, one day before his February 3, 2022 SOR Answer, despite his assurances that he made during his November 24, 2020 OPM PSI in which he stated that he was going to try to resolve his delinquent debts. (Items 2, 4)

Applicant’s FORM response did not contain any documentation that addressed his unmitigated debts. Rather, he provided a statement in which he claims, “to have done everything within my ability to address and satisfy this debt, and to assure the US Government, to include radically cutting back on all expenses, scrimping, saving and

even moving back to living with my parents to free up any available capital.” Applicant went on to say that maintaining his security clearance is a requirement of his continued employment. (Item 7)

Lastly, in his FORM response, Applicant recapped the oath of enlistment he took when he joined the Navy. He also noted favorable comments the OPM investigator made in his PSI. Applicant acknowledged his past errors, and stated that he corrected his mistakes adding that he is doing everything possible and will do everything possible to satisfy his creditors, his employer, and the U.S. Government. He requested that the whole-person concept be considered in evaluating his case concluding with, “I believe that you should allow me to remain briefed, accessed and ‘cleared.’ If so, I can assure you that you will never see my file before you, nor ever regret the favorable judgement that you pronounced.” (Item 7)

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(d), describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a clearance favorable 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 considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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).

AG ¶ 19 provides two 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.” The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The Appeal Board concisely 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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

In summary, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his long-standing financial problems are being appropriately addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

While some of the debts alleged in the SOR arguably resulted from circumstances beyond Applicant’s control due to his 2014 divorce, that is only half of the analysis and Applicant’s response to his financial problems must be the second consideration. Applicant discussed the importance of maintaining his clearance and how losing his clearance will impact his employability. He also mentioned his past history of holding a Top Secret security clearance when serving on submarine duty while he was on active duty. Applicant’s clearance history and the awareness of the adverse consequences clearance loss would have on his future employment should be enough motivation for him to realize that his clearance was in jeopardy if he did not responsibly address his financial situation.

To recap, the majority of Applicant’s debts stem from his 2014 divorce. His OPM PSI took place on November 24, 2020. During that interview, the investigator discussed Applicant’s debts in detail with him and Applicant assured the investigator that he would follow up by taking corrective action. On November 24, 2021, DOHA issued Applicant his SOR identifying outstanding debts that raised security concerns. On February 2, 2022, Applicant entered into a relationship with a DCC. Applicant also stated in his FORM response that he is doing everything possible and will do everything possible to address his indebtedness. However, these assurances ring hollow in light of Applicant’s documented history of financial irresponsibility.

Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his outstanding delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

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 toward 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.

Formal Findings

Formal findings for or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – j:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge