



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



In the matter of:)
)
) ISCR Case No. 20-01491
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2022

Decision

PRICE, Eric C., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On November 24, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant's answer to the SOR was undated, and in it he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written file of relevant material (FORM) dated March 9, 2022, including documents identified as Items 1 through 7. Applicant received the FORM on March 31,

2022. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He submitted a timely response consisting of a cover letter (Applicant's Exhibit (AE) A) and 10 documents (AE B through K). All items and exhibits are admitted into evidence without objection. The case was assigned to me on May 13, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old and a high school graduate. He has been a self-employed truck driver since November 2017, and has worked for a federal contractor since June 2019. He has lived with a cohabitant since May 2017 and has no children. (Items 3, 7)

The SOR alleges 12 delinquent debts, totaling approximately \$38,014. In response to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a, 1.c, and 1.h through 1.k. He reported that he was working with a credit repair agency to resolve his debts and submitted a letter from a credit consultant that he had improved his financial position by obtaining higher paying, more stable employment. He denied the allegations at SOR ¶¶ 1.b, 1.d through 1.g, and 1.i, stating that those accounts had been resolved. Credit records reflect that the debts alleged at SOR ¶¶ 1.f, 1.g, 1.i, and 1.l, totaling approximately \$3,899, were resolved before the SOR was issued, and that the debts alleged at SOR ¶¶ 1.b and 1.e, totaling approximately \$8,370, were resolved before the FORM was issued. (Items 1, 2, 4, 5, 6)

In his June 2019 security clearance application (SCA), Applicant disclosed that he was more than 120 days' delinquent on the accounts alleged at SOR ¶¶ 1.a and 1.c, for the deficiency balance on two vehicle loan accounts totaling \$24,330 after the vehicles were voluntarily repossessed and sold at auction. He also reported the credit card account alleged at SOR ¶ 1.b had been charged off for \$7,080, that he had reached a settlement agreement with the creditor, and that he was making payments under that agreement. He reported financial difficulties in 2016 and 2017 and attributed those difficulties to low wages at his previous employment. He said that he had sought higher paying employment and was working with a credit counseling and repair service to resolve his financial issues. (Item 3)

In an August 2019 interview with a government investigator, Applicant acknowledged that he had incurred the debts alleged at SOR ¶¶ 1.a through 1.l, and stated his intent to resolve those debts. He attributed his financial difficulties to low wages, and said that he would secure more lucrative employment. He reported that he was working with a debt consolidation service and was making monthly payments in an effort to resolve his debts. He said that his financial condition was good, that he was willing and able to repay his debts, and that his financial problems would not recur. (Item 7)

The evidence concerning debts alleged the SOR is summarized below.

SOR ¶1.a: charged-off auto loan for \$11,603. This account was opened in April 2014 and became delinquent in October 2016. Applicant reported that the vehicle was voluntarily repossessed, sold at auction, that the account was delinquent in the amount of \$11,609, that he had engaged a credit counseling and repair service, and that he was making payments on the account as part of a debt consolidation plan. The July 2019 and February 2020 credit reports reflect the account as charged off and past due in the amount of \$11,603. In response to the FORM, Applicant submitted evidence that the deficiency balance had been reduced to \$9,920, that the creditor agreed to settle the account for \$2,580, and that he had made the final payment under the agreement in March 2022. This debt is now resolved. (Items 3, 4, 5, 7; AE C, D)

SOR ¶ 1.b: credit-card account charged off for \$7,080. This account was first delinquent in 2016. Applicant reported the account as delinquent in the amount of \$7,080, and stated that he would make payments under a settlement agreement. The July 2019 credit report reflects the account was charged off for \$7,080. The February 2020 credit report reflects the account as charged off, but subject to a payment plan with a past-due balance of \$1,131. The March 2022 credit report reflects that the charge off was settled for less than the full balance. This debt is resolved. (Items 3, 4, 5, 6, 7)

SOR ¶ 1.c: charged-off joint account auto loan for \$6,925. This account was opened in March 2017 and became delinquent in about November 2017. Applicant reported the vehicle was repossessed, sold at auction, that the account was delinquent in the amount of \$6,925, and that he was making payments on the account as part of a debt consolidation plan. The July 2019, February 2020, and March 2022 credit reports reflect the account as charged off and past due in the amount of \$6,925. Applicant provided evidence that the creditor agreed to settle the account for \$1,000, and that he paid off the account in March 2022. This debt is resolved. (Items 3, 4, 5, 6, 7; AE E, F)

SOR ¶ 1.d: collection account for \$2,600. This account was first delinquent in 2016. The July 2019 credit report reflects the account as in collection with a balance of \$3,000. Applicant reported that he was making monthly payments on his debts through a debt consolidation service. The February 2020 credit report reflects the account balance in collection had been reduced to \$2,600, that “[Applicant] disputes – reinvestigation in process.” This account does not appear in his March 2022 credit report. Applicant claimed that he settled this account in response to the SOR and FORM. Although he failed to provide documentary evidence, and this debt may have fallen off his credit report for other reasons, I have given him credit for his past payments on this debt, and based upon the entire record find that this account has been resolved. (Items 2, 4, 5, 6, 7; AE B)

SOR ¶1.e: charge account charged off for \$1,290. This account was first delinquent in 2016. The July 2019 and February 2020 credit reports reflect the account was charged off for \$1,290. The March 2022 credit report reflects that the charge off was settled for less than the full balance. This debt is resolved. (Items 4, 5, 6)

SOR ¶1.f: charge account charged off for \$1,240. This account was first delinquent in 2016. The July 2019 and February 2020 credit reports reflect the account as charged off with a balance of \$1,240. The March 2022 credit report reflects the account was settled for less than full balance with the last payment in May 2020. This debt is resolved. (Items 4, 5, 6, 7)

SOR ¶1.g: account charged off for \$1,153. This account was opened in 1999 and first delinquent in July 2016. The July 2019 and February 2020 credit reports reflect the account as charged off for \$1,153. The March 2022 credit report reflects the account was settled for less than the full balance with the last payment in May 2020. This debt is resolved. (Items 4, 5, 6, 7: AE B)

SOR ¶1.h: credit account past due more than 120 days for \$146 and total balance of \$545. The July 2019 credit report reflects the account was more than 120 days past due for \$146 with a balance of \$545. The February 2020 credit report reflects the account as charged off with high credit of \$545. In his April 2022 response to the FORM, Applicant submitted evidence that the creditor agreed to settle the account for \$272, and that he agreed to pay off the account by April 26, 2022. This debt is being resolved. (Items 4, 5, 7; AE H)

SOR 1.i: credit account past due more than 120 days for \$367 with total balance \$506. This account was opened in December 2017. The July 2019 credit report reflects the account as more than 120 days past due for \$367 with a balance of \$506. The February 2020 and March 2022 credit reports reflect the account as charged off with \$0 balance and no past-due amount. The March 2022 credit report also reflects that "Consumer disputes after resolution." This debt is resolved. (Items 4, 5, 6, 7)

SOR ¶ 1.j: collection account for \$2,933. This account was first delinquent in 2016. The July 2019 credit report reflects the account as in collection for \$2,933. In response to the FORM, Applicant submitted evidence that the creditor agreed to settle the account for \$1,026 over three installment payments due in April 2022. This debt is being resolved. (Items 4, 7; AE I)

SOR ¶ 1.k: collection account for \$1,677. This account was first delinquent in 2016. The July 2019 credit report reflects the account as in collection. In response to the FORM, Applicant submitted evidence that the creditor agreed to settle the account for \$754 over two installment payments in April 2022. Applicant provided evidence that he made the first installment payment, and the second installment payment was due after he submitted his response. This debt is being resolved. (Items 4, 7; AE J, K)

Applicant's March 2022 credit report reflects only one past-due account in the amount of \$6,925 (SOR 1.c). In response to the FORM, Applicant provided evidence that the debts alleged at SOR ¶¶ 1.a and 1.c, totaling approximately \$18,528, were resolved. He also provided evidence that he had reached settlement agreements with creditors to resolve the debts alleged at SOR ¶¶ 1.h, 1.j, and 1.k. (Items 1, 2, 4, 5, 6; AE C, D, E, F, H, I, J, K)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "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, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the record evidence establish that he has a history of financial problems dating back to 2016. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the persons control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant accrued approximately \$38,000 in delinquent debt because of underemployment, a condition beyond his control. In 2019, he reported his financial issues and efforts to resolve those debts during the security clearance process. He also worked with a debt counseling and consolidation service, provided evidence of payment on his accrued debt, and sought more lucrative employment in an effort to resolve his financial problems. He subsequently found better paying, more stable employment and continued to pay his debt down. Record evidence reflects that he resolved approximately \$3,899 of his delinquent debt before the SOR was issued, and resolved an additional \$29,498 of delinquent debt before responding to the FORM. He provided documentary evidence that he negotiated repayment agreements with his remaining creditors, and that he was in compliance with those agreements when he responded to the FORM. His recent credit records reflect that he is current on all other accounts.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an [he] act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017).

Applicant acted responsibly under the circumstances, he received financial counseling, found better employment, initiated and adhered to good-faith efforts to repay his creditors, has resolved almost 90% of his delinquent debt, and has reached payment agreements with creditors for the remaining debt. Based upon the entire record, I conclude that the circumstances that led to his financial difficulties are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Mitigating Conditions 20(a), 20(b), 20(c), and 20(d) apply.

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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline, F in my whole-person analysis. A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised under Guideline F, financial considerations, are mitigated.

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-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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric C. Price
Administrative Judge