



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



In the matter of:)
)
) ISCR Case No. 20-03582
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

09/22/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has numerous delinquent debts that remain unresolved. He has yet to establish a sufficient track record of financial responsibility. He did not mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 18, 2018. On April 20, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on May 28, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 29, 2021, Department Counsel amended the SOR, adding three allegations (SOR ¶¶ 1.i,

1.j, and 1.k) under Guideline F. Applicant answered the amendment on August 23, 2021. The SOR, the amendment, and Applicant's answers are included in the record.

The case was assigned to me on March 2, 2022. On April 5, 2022, DOHA issued a notice scheduling the hearing for May 25, 2022, to occur by video teleconference through an online platform. On May 24, 2022, during a conference call with the parties, Applicant indicated that he was not prepared to proceed with the hearing the next day. The hearing was continued for good cause shown until June 8, 2022. (Tr. 7) An amended notice of hearing was duly issued.

The hearing convened as scheduled. Applicant appeared on video through his cell phone, while sitting in his car. While this was unusual, I note that I had opportunity at all times to see and hear him, and no audio-visual difficulties were evident. He had the hearing exhibits available to him. Department Counsel offered Government's Exhibits (GE) 1-10. Applicant testified and offered Applicant's Exhibits (AE) A-F. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on June 23, 2022.

I held the post-hearing record open until June 29, 2022, to allow Applicant the opportunity to submit additional information. He timely submitted 64 pages of documents with exhibit labels as noted here. The exhibits are identified as AE H through AE V (there is no AE G) and described as follows: AE H (2017 Tax documents); AE I (regarding home improvement); AE J (GE 6, GE 7, GE 8 with updates in margin notes); AE K (2022 performance award); AE L (performance evaluation 2016-17); AE M (mortgage modification 2017); AE N, AE O, AE P (military retirement pay, discharge, disability); AE Q, AE R (reference letters); AE S (paystubs from contractor C); AE T (paystubs from employer U); AE U (computer company employer paystubs); and AE V (updated SOR response as of June 28, 2022). All of Applicant's post-hearing exhibits (AE H-AE V) are admitted without objection.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.e, 1.i, and 1.k, and denied SOR ¶¶ 1.f-1.h and 1.k, each with a brief explanation. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He and his wife have been married since 2002. They have two teenage sons. Applicant graduated from high school in 1991 and joined the Navy. He served in the Navy on active duty from 1992-2001; he then joined the U.S. Army Reserve for about a year. He then returned to active duty with the Navy and served from 2003-2013 when he retired as a petty officer first class (E-6). He earned an associate's degree in 2001. (GE 10; Tr. 17, 28, 32-35, 82)

After leaving the Navy, Applicant worked part-time and was then hired as a security officer for another government agency (AGA). He worked there from 2013 to February 2018, when he was terminated for failing to report a traffic accident. (GE 1 at 16-17)

Applicant was on patrol and pulled out into traffic. He heard a thump, looked back, and saw a motorcyclist on the ground. He returned to the scene and asked the driver what had happened. The other driver said Applicant pulled in front of him. Applicant did not agree with that, but did not argue. The other driver was not injured. Applicant saw the driver's backpack, and thought he was in college and concluded, or assumed, that the driver did not have enough money to afford to pay for the damage, so he offered to pay for some of the damage, including to the motorcycle's headlight. After a while the driver reported the incident to Applicant's employer, the AGA. Applicant was terminated because he failed to report the incident, which occurred while he was on duty. Applicant said he understood that the offer to pay the other driver looked like a cover up, but that was not his intention. "I just felt bad for him," he said. Applicant considered contesting his termination but did not have the financial means to hire legal counsel to do so. (Tr. 35-49, 62-63)

Applicant was briefly unemployed after he was fired, but then found work as a security manager for \$16 an hour. (AE T) This was a significant decrease from his prior salary of \$88,000 a year with the AGA. (Tr. 41, 64, 112; GE 1) In about January 2019, he began working security with another contractor, making an annual salary in the mid-\$40,000s. He was promoted in mid-2020, and his annual salary rose to the mid \$70,000s. (Tr. 112-114)

Since January 2022, Applicant has worked as an information technology (IT) consultant for a government contractor. He earns \$30.77 an hour in that job, which is full time. (AE U) He recently began working in security at another contractor job, for which he also needs a clearance. He earns \$21 an hour in that job, working 20-25 hours a week. He holds a clearance now and also held a clearance in the Navy. (Tr. 12, 42-43, 112-113; AE S)

Applicant also receives \$1,452 a month in retirement pay. He also is a 100% service-connected disabled veteran. He receives disability pay of \$3,746, recently increased from \$2,800 per month. (AE N, AE O, AE P; Tr. 46-51)

Applicant testified that he first encountered financial trouble while at his last duty station in the military, because he was not making enough money. (Tr. 34; GE 10) He filed for bankruptcy protection under Chapter 13 in 2010, and it was discharged in 2014. (GE 3; Tr. 30, 44) (SOR ¶ 1.a)

After leaving the Navy, Applicant began getting phone calls from creditors in 2017. He then lost income after he was terminated by the AGA and took a significant pay cut in his next job. This led him to fall behind on his debts. He acknowledged that he did not monitor his online bill-paying and income stream. (Tr. 29-30, 43-45, 57-61) His mortgage payment also increased from \$2,400 to \$2,600 per month and he could not meet his financial responsibilities. (Tr. 67-69; Answer; AE A) In 2017, he was offered a mortgage modification, with monthly payments of \$2,416. (AE M)

On his SCA, Applicant listed debt consolidation and various debts. (GE 1 at 43-45) He paid the debt-consolidation firm about \$180 but did not enter into an agreement with

them. (Tr. 65-66) In January 2019, Applicant again filed for Chapter 13 bankruptcy protection. He declared assets of \$933,000 and liabilities of \$535,000, monthly income of \$6,807 and monthly expenses of \$5,581. (GE 2 at 12) Applicant participated in credit counseling during the bankruptcy process, as required. The bankruptcy was dismissed in October 2019 for failure to make payments. (GE 2 at 4; Tr. 30) (SOR ¶ 1.b) He indicated that he and his wife could not afford the bankruptcy plan payments of \$2,000. The bankruptcy trustee also noted that Applicant had unfiled federal income tax returns. (Tr. 68; GE 2 at 60)

Applicant acknowledged that during this period, from about August 2019 to November 2021, he and his family did not pay their mortgage. Due to a federal moratorium on evictions, the family remained in the home. (Tr. 69-70) In November 2021, they moved into a rental property. (Tr. 30. 69-70) Applicant asserted that the home they owned was foreclosed on, but he did not owe anything to the mortgage company because he surrendered the house. (Tr. 103) Applicant has been current on his rental payments of \$2,300 a month since December 2021, including a \$4,400 security deposit. (AE E)

In January 2022, Applicant cashed out his 401k retirement (about \$11,000) to address his debts. He said he has between \$400 and \$700 at the end of each month after paying the household expenses. He has little to no savings currently. He tries to keep a budget but does not have a formal one. He did pursue credit counseling and budgeting from Navy Relief. He was advised to declare bankruptcy, which he did in 2019. He said his financial issues were generally attributable to falling behind on his bills trying to provide for his family. (Tr. 51-55) Applicant hopes to be debt free by the end of 2023. (Tr. 31, 101)

SOR ¶ 1.c (\$35,850) is a student loan account placed for collection. (GE 8, 9) The loans date back to at least 2001, when he earned his associate's degree, and were delinquent by 2004, when he owed almost \$21,000 in past-due student loans. (GE 10; Tr. 86) They became delinquent again in about 2014. He thought they were covered in his bankruptcy discharge but they were not. He said he made partial payments until about 2018 when he lost his job. Applicant made \$5 monthly payments from January 2021 to May 2021 so he could be considered for deferred payment. (Tr. 82-89) The student loan is now with a different creditor, and payments are deferred until June 2022. (Answer; GE 6; AE A; Tr. 77, 107-109) He will soon be required to pay \$108 per month. (AE V)

SOR ¶ 1.d (\$10,071) is a home improvement account, opened in 2015, now placed for collection. He now owes \$10,359 (GE 6, 7, 8, 9) He has a payment plan in place for \$200 monthly payments, to start in July 2022. He says he owes only \$2,100. (Answer; Tr. 27, 89-92; AE A, AE I, AE V) Applicant mistakenly relies on AE I to conclude that he owes only \$2,150 on this delinquent debt; however, AE I relates to a different home improvement company. They are different accounts, and SOR ¶ 1.d is unresolved.

SOR ¶ 1.e (\$4,026) is a charged-off debt to a bank. (GE 6, 7, 8, 9) Applicant said he called the creditor in January or February 2022 and made a few payments before then. He has a payment plan in place for \$250 a month starting July 2022 and the total amount owed is \$3,772. (Answer; AE A; AE B, AE V; Tr. 92-93)

SOR ¶¶ 1.f (\$1,863) and 1.h (\$2,452) are debts charged off by a credit union. (GE 6, 8, 9) Applicant set up a payment plan to pay off the two accounts and said they were paid off in January 2022. He provided no receipts but credit reports show a zero balance. (Answer; AE A, AE V; Tr. 93) These accounts are resolved.

SOR ¶ 1.g (\$263) is a medical debt placed for collection. (GE 8) The account has been paid. (AE C; Tr. 95-96)

SOR ¶ 1.i (\$5,778) and SOR 1.j. (\$2,877) are two judgments filed entered against Applicant in favor of an HOA, in 2020 and 2016 respectively. (GE 4; GE 5) Applicant indicated that he initiated a payment plan to resolve both HOA judgments in April 2022. (AE A) He paid \$1,000 in April 2022 and \$200 in May 2022 (AE D) Applicant asserts it is one debt, not two, and believes he owes around \$7,000 total. (Tr. 96-101) His post-hearing documentation did not include any additional payments since May 2022. (AE V)

SOR ¶ 1.k concerns Applicant's 2017 federal income tax return, unfiled as of the date of the SOR amendment. Applicant knew that tax returns are usually due by April 15 of the following year. (Tr. 70-71) His 2017 tax returns were unfiled at the time he filed his 2019 bankruptcy, as noted. Applicant and his wife take their tax returns to a nationally known tax preparer. They did not alert them that he was late on his tax filing. (Tr. 79)

Applicant did not file the returns on time (by April 2018) because of his recent termination (February 2018). (Tr. 75) He said he filed his 2017 returns in April 2020. (Tr. 72-74) Post-hearing documentation from his tax preparer shows that his 2017 state and federal returns were prepared at that time. Applicant owed \$4,145 in federal income taxes and \$114 in state income taxes for tax year 2017. (AE H at 18) There is no evidence that Applicant has paid or is paying these delinquent taxes. He said he had no other unfiled returns and no other delinquent federal or state taxes. (Tr. 70-82)

According to his 2019 bankruptcy petition, Applicant has several other debts, some of which remain unpaid and unresolved, since the bankruptcy was dismissed. Applicant asserted that he had paid some, and did not recognize others. The bankruptcy petition was filed jointly with his wife. (Tr. 101-107; GE 2)

Applicant was recognized in February 2020 with an award at work. (AE K) He achieved excellence or exceeded expectations in an earlier performance evaluation, from 2016-2017. (AE L) Applicant's references attest to his reliability, professional judgment, his value as an asset to his employer, and to the importance he places on his family. (AE Q, AE R)

Applicant understands the security significance of his financial history of late payments due to mismanagement and loss of employment. He is working to address his debts. He has reduced his spending, set a budget, and set up repayment plans. He takes pride in his prior military service and wants to continue to serve the country. (AE V)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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 security 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.

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Applicant has had prior bankruptcies, subsequent financial delinquencies, and a past-due tax return. The following AGs are applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

In ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added), the DOHA Appeal Board set forth why failure to file tax returns is a security concern:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.*, ISCR Case No, 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, *neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or 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 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; 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.

Applicant has a long history of financial instability and mismanagement, going back to his days in the Navy. He has resolved some of his debts, but most of his delinquencies remain ongoing and unresolved. His student loans go back almost 20 years, and remain largely unaddressed. The fact that they are now in deferment is not enough to eliminate the fact that they have been delinquent for years in the past. He has not established that his debts are due to circumstances that are unlikely to recur or no longer cast doubt on his judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

Applicant has had some recent unemployment and decreased income. AG ¶ 20(b) therefore has some application. However, his financial delinquencies predate those circumstances. Applicant is credited with working two jobs in an effort to pay his debts and rehabilitate his finances. Some of his debts have been paid, but others remain largely unaddressed. Applicant has settlement offers and payment plans for some of his debts but these debt-resolution efforts are recent, and he has not established enough of a track record of steady payments towards them to warrant full credit under AG ¶¶ 20(b) or 20(d).

Applicant participated in some credit counseling during the bankruptcy process. He has taken some steps to limit his expenses, such as moving into a rental home. However, he did not provide sufficient evidence to establish that his debts are being resolved and are under control. AG ¶ 20(c) does not fully apply.

Applicant denied the debts at SOR ¶¶ 1.f-1.h and established that they have been paid and resolved. AG ¶¶ 20(d) and 20(e) apply to them.

Applicant failed to file his 2017 federal income tax return on time as required. That return was due in April 2018, shortly after he was terminated from his job with the AGA. The return was likely filed by his tax preparer in April 2020, though this is not clear from the record. This is the only past-due tax return alleged in the SOR. Applicant's documents indicate that as of April 2020, he owed about \$4,100 in past-due federal taxes for 2017, and about \$100 in state taxes as well. The past-due taxes are not alleged in the SOR,

but can be considered in weighing mitigation. Applicant did not provide sufficient information for full application of AG ¶ 20(g).

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

- (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.

Applicant is a retired, disabled veteran, with a long career in the defense industry. I credit this positive evidence in Applicant's favor. But he also has a long history of financial issues, going back to his time in the Navy. He has filed for bankruptcy protection twice, and was unable to meet the payment plan for the second bankruptcy. He did not pay his mortgage for about two years before moving into a rental home. He has numerous old and unresolved past-due debts, and he has yet to implement a reasonable plan to address them. Applicant needs to establish a consistent track record of financial stability in order to mitigate the financial security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not provide sufficient evidence to mitigate financial 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.e:	Against Applicant
Subparagraphs 1.f-1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge