



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



In the matter of:)
)
) ISCR Case No. 20-01321
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*
10/31/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on June 11, 2019. On November 6, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). DOHA received Applicant’s undated answers to the SOR on January 1, 2021, and on April 2, 2021, and he elected to have a hearing. (Answer) I was assigned to the case on April 5, 2022. On May 5, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 31, 2022.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the Department Counsel’s May 23, 2021 motion to amend the SOR as Hearing Exhibit (HE) I; Applicant’s June 6, 2021 answer to the SOR amendment as HE II; the May 18, 2022 case management order as HE III; Department Counsel’s exhibit list as HE IV; Applicant’s post-hearing exhibit list as HE V; the email exchange and my remarking of Applicant’s exhibits as HE VI. Department Counsel submitted six exhibits, which I marked as Government Exhibits (GE) 1 through 6, and they were admitted, without objection. Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted without

objection. DOHA received the transcript (Tr.) on June 15, 2022. At the hearing, per Applicant's request, I held the record open until June 21, 2022, to allow him to submit documentation. He timely submitted documentation that I marked as AE B through L. They were admitted, without objection, and the record closed June 21, 2022.

Amendment to the SOR

On May 12, 2021, Department Counsel (DC) sent Applicant an amendment to the SOR. He responded on June 16, 2021, and admitted all of the amended SOR allegations. At the hearing, DC moved to amend the SOR, pursuant to Paragraph 17 of the Additional Procedure Guidance of the Directive, to add the following allegations:

SOR ¶ 1.l. You are indebted to A for an account that is past due in the approximate amount of \$13,390.00 with a total loan balance of \$122,191.00. As of the date of this Amendment to the Statement of Reasons, the amount remains past due.

SOR ¶ 1.m. You are indebted to B for an account that has been placed for collection by C in the approximate amount of \$364.00. As of the date of this Amendment to the Statement of Reasons, the amount remains delinquent.

SOR ¶ 1.n. You are indebted to D for an account that has been charged off in the approximate amount of \$448.00. As of the date of this Amendment to the Statement of Reasons, the amount remains delinquent.

SOR ¶ 1.o. You are indebted to E/F for an account that has been charged off in the approximate amount of \$680.00. As of the date of this Amendment to the Statement of Reasons, the amount remains delinquent.

SOR ¶ 1.p. From about 2015 through 2017, you inappropriately used your company credit card for personal use. You received a written reprimand from your employer and were suspended with loss of pay for one week.

At the hearing, Applicant did not object to the amendment to the SOR, and I granted Department Counsel's motion to amend the SOR. I left the record open until June 21, 2022, to provide him an opportunity to submit additional documentary evidence. See ISCR 02-23365 at 5 (App. Bd. Mar. 22, 2004) ("[A]s long as there is fair notice to an applicant about the matters that are at issue in his case, and the applicant has a reasonable opportunity to respond, a security clearance case should be adjudicated on the merits of the relevant issues and should not be overly concerned with pleading niceties."); See *also* ISCR Case No. 05-05334 at 4 (App. Bd. Jan. 10, 2007) ("The government and the Judge are free to amend the SOR at any time, but must permit Applicant time and an opportunity to respond to the adverse reason upon which any adverse decision is based."). Applicant submitted post-hearing documentation. (HE I; HE II; Tr. 16-17)

Findings of Fact

Applicant is 60 years old and has been married to his current wife for twelve years. He was married to his ex-wife from 1982 until 2007, and they have two adult children. He has no ongoing financial support requirements for his ex-wife or children. In 1990, he received an associate degree in industrial electronics. He enlisted in the U.S. Marine Corps in 1980 and served until 1990, when he was honorably discharged as a sergeant (E-5). He has worked for Defense contractors, since July 1990, and he has been with his current employer since 1997. His current job title is lead test engineer. He has held at least a secret-level security clearance since 1981, and held a top-secret security clearance for an unrecalled period when he was in the Marine Corps. (Tr. 10-11, 26-29, 88; GE 1; GE 2; AE A)

The SOR alleged that Applicant had eleven delinquent debts totaling \$38,365. In his second response to the SOR, he indicated, "I admit" to each of the SOR allegations. However, he claimed he was "making payments" toward SOR ¶¶ 1.a to 1.c, 1.f, 1.g, and 1.j, and he had "paid off" SOR ¶¶ 1.d, 1.e, 1.h, 1.i, and 1.k. Therefore, I am considering his admissions to be de facto denials. He did not submit supporting documentation for these claims. The Amendment to the SOR included three delinquent debts totaling \$1,492 and an account that was \$13,390 past due on an account with a total balance of \$122,191. Additionally, the Amendment alleged that he misused his company's credit card between 2015 and 2017. He admitted these five allegations. (SOR; Answer; HE I; HE II; GE 1 at 46)

In Applicant's June 2019 SCA, he disclosed the debt alleged in SOR ¶ 1.h and three unalleged debts. He also disclosed that he used his company credit card for personal use, as alleged in SOR ¶ 1.p. He indicated his financial issues were the result of his wife's health issues, and all of the detailed debts were being paid. At the hearing he testified that prior to completing his SCA, he discussed his family finances with his wife. She told him that they had some delinquent debts, but she had established payment arrangements, and the debts were being paid. He was unaware that they had delinquent debts prior to completing the 2019 SCA. He did not investigate the status of his finances further or confirm that the delinquent debts were being paid, because she told him she had "a handle" on the bills. He continued to trust her with their finances, despite her past inability to manage money responsibility, as discussed below. He was also unable to monitor their finances closely due to his frequent work-related travel. (GE 1 at 46-51, Tr. 30-32, 40-46)

As alleged in SOR ¶ 1.p, starting in approximately 2015, Applicant used his company-issued-travel card, at his wife's request, to pay for personal things they needed when they were between paychecks. They would pay off the card when he received his next paycheck before the card's billing cycle. He resorted to using his company card, because his personal credit cards were "close to their limit and ... there wasn't enough money on the card to put the total amount on the personal card." He did this more than ten times, despite knowing it was a violation of his company's policy, and continued until his misuse was discovered in a company audit. He received a written counseling and a

one-week suspension with loss of pay from his job. He could not recall how much money in total he charged to his company card. (GE 2 at 4; Tr. 33-38, 88)

Applicant travels overseas between four to ten months each year for his job, and he has been doing this for at least five years. His time spent overseas is collective, not consecutive. While he is abroad, his wife handles their finances, and according to Applicant, she has not handled them well. Despite Applicant's wife asking him to use his company-travel card to pay for their household expenses, he was still under the impression that she had a "handle" on their finances. He occasionally saw letters from a creditor or a debt collector, but she would tell him that she had things under control. (GE 2; Tr. 33-39)

Applicant testified that he started taking a more active role in their family finances in approximately May 2021. He admitted at the hearing that he should have started doing this "a lot sooner, but with traveling as much [as he does, he] can only do so much over the phone" in the management of their finances. (Tr. 46-47)

At an unrecalled date, Applicant's wife was diagnosed with Crohn's disease, and it continues to be a problem for her. She worked fulltime until approximately 2016, but in the past six years, she has only managed to work part-time. At the time of the hearing, "even with paying off the debts" Applicant and his wife were "not hurting for anything." (GE 1; GE 2; Tr. 30-32)

Between, 2012 and 2017, Applicant and his wife took seven cruises to the Dominican Republic, Belize, Canada, Ireland, and Mexico. According to him, they "pretty much did not have to pay that much for the cruises." (Tr. 38-39; GE 1)

During his July 2019 interview with a government investigator, which he adopted in June 2020, Applicant discussed the debts alleged in the SOR. He did not recognize the debts alleged in SOR ¶¶ 1.a to 1.e, and 1.o. (GE 2)

The \$14,881 credit-card debt alleged in SOR ¶ 1.a remains unresolved. The account was opened in September 1987, Applicant stopped making payments in approximately July 2015, and the account was charged off in 2018. In his answer to the SOR, he indicated that he was making payments on this debt. At the hearing, he stated he had been making \$200 monthly payments since an unrecalled date, in accordance with a settlement agreement. However, in his post-hearing submission, he submitted a June 7, 2022 settlement agreement with the creditor. The first \$496.05 payment was scheduled to be paid on June 6, 2022. The creditor agreed to accept eleven \$496.05 payments, totaling \$5,456.55. Applicant did not submit proof of any payments made toward this debt. (Answer; GE 2 at 8; GE 3 at 3; GE 4 at 3; GE 5 at 3-4; GE 6 at 5; AE C; Tr. 48-52)

The \$4,493 credit-card debt alleged in SOR ¶ 1.b remains unresolved. The account was opened in December 2013, Applicant stopped making payments in approximately January 2019, and the account was charged off in 2019. In his answer to the SOR, he indicated he was making payments toward this debt. At the hearing, he

stated he had made two \$200 payments toward this debt, and his post hearing submission from the creditor confirmed he started making \$200 monthly payments in April 2022. The creditor has not entered into a settlement agreement with him, and he is required to make \$200 monthly payments until the balance is resolved in February 2024. (Answer; GE 2 at 8; GE 3 at 3; GE 4 at 4; GE 5 at 4-5; GE 6 at 7; AE D; Tr. 52-56)

The \$4,198 credit-card debt alleged in SOR ¶ 1.c remains unresolved. The account was opened in August 2012, Applicant stopped making payments in approximately August 2015, and the account was charged off in 2019. In his answer to the SOR, he indicated he was making payments toward this debt. At the hearing, he could not provide a status for the debt. In his post-hearing submission, he submitted a December 2021 email from Equifax regarding a dispute over an account, but the email does not indicate if it is for the account alleged in SOR ¶ 1.c. (Answer; GE 2 at 8; GE 3 at 3; GE 4 at 3; GE 5 at 4; GE 6 at 5; AE E; Tr. 56-58)

Applicant provided post-hearing documentation to demonstrate that on May 25, 2022, he paid in full the \$645 credit-card debt alleged in SOR ¶ 1.d. He was an authorized user on this account. His wife opened it in January 2018, it became delinquent in September 2018, and it was charged off in January 2019. In his answer, he indicated he had already paid it. At the hearing, he testified that he paid it off in April or May 2022; however, it is now resolved. (Answer; GE 2 at 8; GE 3 at 3; GE 4 at 6-7; GE 5 at 6; GE 6 at 10; AE D; Tr. 58-59)

The \$171 debt alleged in SOR ¶ 1.e remains unresolved. It was opened in December 2018, and charged off in June 2019. In Applicant's answer to the SOR, he indicated he had paid it off. At the hearing, he stated that he believed it was paid, but he did not know for sure. The account does not appear on his most recent credit report; however, it was charged off, and he has not provided documentation to demonstrate that this account has been resolved. (Answer; GE 2 at 8; GE 3 at 3; GE 4 at 6; GE 5 at 6; GE 6 at 9; AE B; Tr. 59-61)

The \$7,360 credit-card debt alleged in SOR ¶ 1.f remains unresolved. This debt has been transferred to a collection agency, and it is unclear when it was originally opened and became delinquent. In Applicant's answer to the SOR, he indicated he was making payments toward this debt. The May 2022 credit report in the record reflects a balance of \$8,412. At the hearing, Applicant stated he spoke to the creditor a month or two before the hearing and established a payment agreement to resolve the debt by May 2025, and he could not recall how many payments he had made toward the debt. In his post-hearing submission, he provided documentation that he entered into a settlement agreement with the creditor at an unspecified date. However, his first payment of \$574.38 payment was made on May 25, 2022, and then he is required to make \$100 bi-weekly payments, starting on June 3, 2022, until the settlement balance of \$7,800 is resolved in May 2025. (Answer; AE G; Tr. 61-62)

Department Counsel withdrew SOR ¶ 1.g at the hearing, as it is duplicative of SOR ¶ 1.j. (Tr. 63-64)

Applicant submitted a post-hearing submission to demonstrate he resolved the \$591 credit-card debt alleged in SOR ¶ 1.h. He settled it for \$500 on May 25, 2022. In his SCA, he claimed he was making payments toward a settlement, and the debt would be paid in July 2019. During his July 2019 interview, he again claimed it would be resolved in July 2019. In his answer to the SOR, he claimed he had paid this debt; however, as noted above, it was not resolved until May 25, 2022. (Answer; GE 2 at 6; GE 3 at 9; GE 4 at 4; GE 5 at 3; GE 6 at 6; AE H; Tr. 64-66)

Applicant submitted a post-hearing submission to demonstrate that he resolved the \$199 utility debt alleged in SOR ¶ 1.i. He provided a June 7, 2022 statement from the creditor demonstrating that the debt was resolved; however, it is unclear when it was paid or how much he paid. In his answer to the SOR, he had indicated that he had already paid this debt. (Answer; GE 2 at 7; GE 3 at 9; GE 4 at 2; GE 5 at 1; AE H; AE I; Tr. 66-67)

The \$2,758 credit-card debt alleged in SOR ¶ 1.j remains unresolved. This debt is a duplicate of SOR ¶ 1.g. It was opened in 2016, and placed for collection in 2017. Applicant told the investigator that he had negotiated a settlement of \$1,200, was making payments, and the debt would be resolved in April 2020. He also indicated in his answer that he was making payments. In his post-hearing submission, he provided a March 2019 offer of settlement; however, he failed to provide proof of payments. The June 10, 2022 credit report submitted by Applicant demonstrates that he is disputing this debt, but it still appears as unpaid. (Answer; GE 2 at 6; GE 3 at 9; GE 4 at 1; GE 5 at 2; AE J; AE L; Tr. 67-69)

The \$458 credit-card debt alleged in SOR ¶ 1.k remains unresolved. Applicant testified that he paid this debt, but failed to provide substantiating documentation. (GE 4 at 2; GE 5 at 2; AE B; Tr. 69-70)

The home equity account alleged in SOR ¶ 1.l, was past due in the amount of \$13,390. It was opened in October 2007, and became delinquent in November 2020, when Applicant stopped making his monthly payment of \$1,276. According to Applicant, his bank advised him to stop making payments while he was in the process of refinancing the loan. He ultimately refinanced it, and the delinquent payments and interest were rolled into the principle. At the hearing, he could not explain what he did with more than \$7,500 of payment money he did not make to the creditor while refinancing his loan. This account is current according to his most recent credit report. (GE 4 at 2; GE 5 at 3; GE 6 at 4; AE L; Tr. 70-74)

The \$364 credit-card debt alleged in SOR ¶ 1.m is resolved according to Applicant's May 2022 credit report. (GE 4 at 4; GE 5 at 3; GE 6 at 4; Tr. 75)

Applicant submitted a post-hearing document to demonstrate that on June 7, 2022, he resolved the \$447 credit-card debt alleged in SOR ¶ 1.n. This account was opened in December 2018, his last payment was in January 2019, and it was subsequently charged off by the creditor. (GE 5 at 5; GE 6 at 8; AE K; Tr. 76)

The \$689 credit-card debt alleged in SOR ¶ 1.o remains unresolved. This account was opened in 2011, his last payment was in January 2019, and it was subsequently charged off by the creditor. He claims he has settled it for \$340.23 on June 10, 2022, but failed to provide supporting documentation. (GE 6 at 9; AE B; Tr. 76-77)

The June 2022, three-page credit report submitted by Applicant in his post-hearing submission reflects an unalleged \$296 delinquent medical debt. It will not be considered disqualifying. (AE L)

Applicant's annual salary is approximately \$120,000. He has a 401(k), he does not know the balance, and he has a \$5,000 loan against it. At the time of the hearing, he had approximately \$1,000 in checking and no money in savings. He had not filed his state or federal income tax returns for tax year 2021, nor was he sure if his wife had filed an extension. They had established a monthly budget approximately four years ago, and his wife continues to pay all of their bills except for their mortgage. (Tr. 81-89)

Applicant wants to continue to serve the United States Government, and he does not consider himself to be a risk to security. The oath he took as a Marine is not something he took lightly, and he still keeps this oath. (AE A; Tr. 91-92)

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 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 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.

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

Guideline F: Financial Considerations

The concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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; and

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

Applicant's financial issues started due to his wife's illness and her mismanagement of their financial affairs; however, he failed to demonstrate that he acted responsibly in the intervening years to address his delinquent debts and to establish control over their finances. The record lacks evidence of him making proactive payments toward his alleged delinquent debts prior to April 2022. There is evidence that some of the alleged debts were resolved; however, all of the payments were made either just before or just after the hearing. This does not reflect a good-faith effort to repay or resolve his debts. Additionally, he failed to provide substantiating documentation that the remaining debts are being resolved or paid. He made assertions throughout the process that his debts were paid or were being paid, and the documentation demonstrated that these claims were inaccurate or false. According to Appeal Board jurisprudence, Applicant is responsible for providing reasonably available corroborating documentation to show debt resolution. He did not meet his burden of showing his debts were resolved.

Due to Applicant and his wife failing to manage their personal finances, he resorted to intentionally violating his company's policy regarding the use of his company credit card. At his wife's request, between 2015 and 2017, he charged personal expenses to his company card, because he did not have enough credit available on his personal cards. He did this at least ten times, and the behavior only ceased due to a company audit. Because he overextended himself, he engaged in questionable acts to generate funds, while knowing he was violating his employer's policy. This conduct does not demonstrate good judgment, reliability, or trustworthiness.

Applicant's failure to provide adequate documentation to demonstrate that he has resolved or is resolving his debts as he claimed is sufficient to demonstrate that he has not acted responsibly under the circumstances to address and resolve his financial obligations. Mitigation under AG ¶¶ 20(a), 20(b), and 20(d) was not established.

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(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, including Applicant's honorable military service and work overseas. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, he has not demonstrated the actions of a responsible, reliable, and trustworthy person. I conclude he did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e – 1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h – 1.i:	For Applicant
Subparagraphs 1.j – 1.k:	Against Applicant
Subparagraph 1.l – 1.n:	For Applicant
Subparagraphs 1.o – 1.p:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge