



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



In the matter of:)	
)	
)	ISCR Case No. 20-03240
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin Thompson, Esq., Department Counsel
 For Applicant: *Pro se*
 10/26/2022

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 August 8, 2019. On December 11, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on August 21, 2021, and elected to have a hearing. (Answer) The case was assigned to me on June 8, 2022. On July 18, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 2, 2022.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the July 18, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel’s exhibit list as HE II; and Department Counsel’s June 1, 2022 discovery letter as HE III. Department Counsel submitted eight exhibits, which I marked as Government Exhibits (GE) 1 through 8. GE 1 and 8 were admitted without objection. I admitted GE 2 to 4 (May 2022, October 2020, and September 2019 credit reports, respectively), over Applicant’s objection to them being outdated. I admitted GE 5 to 8 (Defense Information Security System (DISS) documents related to writs of garnishments filed against

Applicant), over his objection that he is paying or has paid these debts. His objections go to the weight rather than the admissibility of GE 2 to 8. Applicant testified and did not submit any exhibits. DOHA received the transcript (Tr.) on August 12, 2022.

At the hearing, per Applicant's request, I held the record open until August 23, 2022, to allow him to submit documentation, including, but not limited to an updated credit report and other documentation to reflect the resolution of the debts alleged in the SOR. On August 19, 2022, he sent an email requesting an extension to September 2, 2022. Department Counsel did not object, and I granted his request. I marked the exchange of emails as HE IV. He did not submit documentation, and the record closed on September 2, 2022.

Amendment to the SOR

During the hearing, Department Counsel questioned Applicant regarding unalleged debts that she learned of based upon the DISS reports found in GE 5 and 6 and court records found in GE 7. She moved to amend the SOR, pursuant to Paragraph 17 of the Additional Procedure Guidance of the Directive, to add the following allegations:

SOR ¶ 1.m. Your wages at your employer are being garnished by Creditor A in the approximate amount of \$1,754. As of the date of this hearing, the amount remains unpaid.

SOR ¶ 1.n. Your wages at your employer are being garnished by Creditor B in the approximate amount of \$14,712. As of the date of this hearing, the amount remains unpaid.

SOR ¶ 1.o. You are indebted to the Commonwealth for past-due fines and court costs in the approximate amount of \$126. As of the date of this hearing, the amount remains unpaid.

SOR ¶ 1.p. You are indebted to the Commonwealth for past due fines and court costs in the approximate amount of \$101. As of the date of this hearing, the amount remains unpaid.

I denied Department Counsel's motion to amend SOR ¶ 1.m to allege the amount of \$1,869. This larger amount did not conform to the documentary evidence and did not reflect the balance of the debt Applicant owed at the time of the hearing. Additionally, I denied her motion to amend the SOR to include a \$4,482 garnishment, as the Government admitted that this debt was duplicative of the debt alleged in SOR ¶ 1.c. (Tr. 25-29, 81-89)

Applicant objected to the motion to amend the SOR to add the additional allegations in SOR ¶¶ 1.m through 1.p. He argued that he had resolved the debts in SOR ¶¶ 1.m, 1.o, and 1.p prior to the hearing and was making payments toward the debt in SOR ¶ 1.n. Additionally, he indicated Department Counsel should have amended the SOR prior to the hearing date. I allowed the SOR to be amended to add the above

allegations to the SOR. I left the record open until August 23, 2022, and granted Applicant an extension to September 2, 2022, to provide him an opportunity to submit documentary evidence to corroborate his testimony and rebut the SOR allegations. 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 did not submit any post-hearing documentation. (Tr. 25-29, 81-89)

Upon *sua sponte* reconsideration, I am denying Department Counsel’s request to amend the SOR. Applicant timely objected to the amendment, and he should have had 15 days of notice of all SOR allegations, which would have given him more of an opportunity to decide whether to present evidence at the hearing to corroborate his claims of efforts to resolve the unalleged delinquent debts.

Findings of Fact

Applicant is 30 years old and has a two-year-old daughter and sons who are five and seven years old. He married in June 2011 and divorced in September 2014, and they had no children together. He remarried in June 2021, and she is the mother of his daughter. He received a high school diploma in 2010. He is currently taking college courses toward a degree in business and leadership, and has completed approximately 84 college credits. He enlisted in the U.S. Navy in October 2010, and served on active duty until June 2018, when he was honorably discharged as an Aviation Machinist’s mate second-class petty officer (AM2). He has worked for his employer, a DoD contractor, since November 2018. After at least two promotions, he is now a custom facilities specialist. He has held a secret security clearance since 2010. (Tr. 10-11, 30-40)

The SOR originally alleged that Applicant has twelve delinquent debts totaling \$37,721. In his response, he indicated, “I admit” to each of the SOR allegations, but claimed that all of the debts were “settled and paid.” Therefore, I am considering his answers to be *de facto* denials. He did not submit supporting documentation to support his claims. (SOR, Answer, GE 5-7)

In Applicant’s August 2019 SCA, he disclosed two delinquent debts, one of which was alleged in SOR as ¶ 1.j. He claimed he had resolved the unalleged debt and was making payments toward the delinquent debt alleged as SOR ¶ 1.j. (GE 1 at 41-43)

In September 2019, Applicant was interviewed by a government investigator. His overall finances were discussed as well as all of the debts alleged in the SOR. He indicated his ex-wife incurred several debts in his name without his knowledge and authorization, during a deployment while serving in the Navy. He did not become aware of the debts until he returned from the deployment. However, he also claimed that all of the debts alleged in the SOR were due to his bank placing a fraud alert on his checking

account while he was deployed between July 2013 and April 2014. Prior to his deployment, he had set up auto payments for his bills. Because of the fraud alert, his account was frozen, and none of his creditors were paid. He did not find out about this issue until he returned from his deployment. (GE 8)

Applicant told the investigator that all of the delinquent debts were resolved through payment arrangements. The investigator contacted Applicant multiple times and either spoke to him or left voice messages for him between September 14, 2019, and March 5, 2020. These contacts were regarding Applicant's finances and Applicant providing documentation to support his claims that he had resolved or was resolving his delinquent debts. He failed to provide documentation to the investigator. (GE 8)

The \$4,143 credit-card debt alleged in SOR ¶ 1.a remains unresolved despite Applicant's assertion that he settled it. This account was opened in January 2017. He testified that it was opened to assist in the purchase of his motorcycle; however, as noted below, the loan for his motorcycle was opened in 2014. Regardless, his last payment toward this account was made in approximately January 2019, and the debt was ultimately charged off. He claimed he resolved it in 2020 or 2021, but failed to provide substantiating documentation. (Answer; GE 4 at 6; GE 8; Tr. 56-57)

The \$147 cable debt alleged in SOR ¶ 1.b remains unresolved despite Applicant's assertion that he settled it. The account was opened in April 2018, and the last payment was made in September 2019. He failed to provide documentation to support his claim that he paid this debt. (Answer; GE 4 at 6; GE 8; Tr. 57)

The \$7,930 auto-related debt alleged in SOR ¶ 1.c was resolved in March 2022 through garnishment. Applicant testified that two months after he purchased the vehicle in August 2015, it stopped working. Because he had a 90-day warranty, he ultimately, returned it to the dealership; however, the creditor garnished his wages. He resumed making voluntary payments, at an unrecalled date, and paid the remaining balance prior to purchasing his home in March 2022. The documentary evidence reflects that Applicant stopped making voluntary payments in May 2016, and the last garnishment was on March 15, 2022. He could not recall how much he paid to resolve this debt, but indicated he would submit paperwork after the hearing with the relevant information. He did not submit documentation. (Answer; GE 2 at 5; GE 3 at 4; GE 6 at 2; GE 8; Tr. 41-48, 52, 82-84)

The \$3,436 and \$1,531 federal debts alleged in SOR ¶¶ 1.d and 1.e remain unresolved despite Applicant's assertions otherwise. According to Applicant, both of these debts were due to overpayments by the Department of Veterans Affairs (VA). He testified that they were resolved in December 2021, after he requested the VA apply his disability benefits to the debts. He was required to pay them before he could purchase his home using his VA eligibility in March 2022. He indicated he had documentation to support his claims that both of these debts were resolved; however, he failed to submit it. (Answer; GE 3 at 3-4; GE 4 at 7; GE 8; Tr. 53-56)

The \$128 auto-insurance debt alleged in SOR ¶ 1.f remains unresolved despite Applicant's assertion that he settled it. The account was opened in August 2016, and his

last payment was made in May 2019. He failed to provide documentation to support his claim that he paid this debt. (Answer; GE 4 at 7; GE 8; Tr. 58)

The \$127 utility debt alleged in SOR ¶ 1.g remains unresolved despite Applicant's assertion that he settled it. The account was opened in April 2018, and his last payment was made in approximately August 2019. He failed to provide documentation to support his claims that he paid this debt. (Answer; GE 4 at 7; GE 8; Tr. 58)

As reflected in the May 2022 credit report, Applicant settled the \$3,656 personal-loan debt alleged in SOR ¶ 1.h. for less than the full balance. At the hearing, he testified that he resolved this debt through a payment arrangement, but he could not recall what the payment agreement was, how much he paid toward the debt, or what the monthly payments were. He indicated he had paperwork to reflect this information, but failed to provide it. (Answer; GE 2 at 6; GE 3 at 2-3; GE 4 at 8; GE 8; Tr. 51-53)

The \$1,258 personal loan alleged in SOR ¶ 1.i remains unresolved despite Applicant's assertion that he settled it in 2020. The account was opened in February 2017, and his last payment was made in July 2019. He failed to provide documentation to support his claim that he settled this debt with a third-party collection agency. (Answer; GE 4 at 8; GE 8; Tr. 59)

The \$9,650 motorcycle-loan deficiency alleged in SOR ¶ 1.j remains unresolved despite Applicant's assertion that he settled it in 2021. This account was opened in August 2014, and his last payment was made in July 2016. He testified that when his motorcycle was stolen in 2017, he did not have insurance, and he was required to pay the remainder of the loan. (Answer; GE 2 at 6; GE 3 at 3; GE 4 at 8; GE 8; Tr. 48-51)

The \$2,844 credit-card debt alleged in SOR ¶ 1.k remains unresolved despite Applicant's assertion that he settled it. The account was opened in August 2016, and his last payment was made in May 2019. He failed to provide documentation to support his claim that he paid this debt. (Answer; GE 4 at 8; GE 8; Tr. 59-60)

The \$1,795 credit-card debt alleged in SOR ¶ 1.l remains unresolved despite Applicant's assertion that he settled it in 2020. The account was opened in January 2016, and his last payment was made in July 2019. He failed to provide documentation to support his claim that he paid this debt. (Answer; GE 4 at 9; GE 8; Tr. 60-61)

The unalleged debts below will not be considered disqualifying, and I will only consider them in determining if the mitigating conditions are applicable and in my whole-person analysis. See ISCR Case No. 20-01577 at 3 (App. Bd. June 6, 2022) (citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (listing the purposes for which non-alleged conduct can be considered)).

The unalleged \$1,754 writ of garnishment remains unresolved despite Applicant's assertion that he resolved it in March 2022, prior to purchasing his home, as mentioned below. Sometime between 2015 and 2018, he lived at an apartment managed by X Property Management. At the hearing, he could not recall the specific dates he lived at

the apartment. While living there, he was late a few times with his rent. During this time, he was first trying to “take care of a lot of the debts that [he] had acquired from [his] marriage.” He lived in the apartment with the mother of his oldest son. After he moved out, at an unrecalled date, X Property Management replaced the carpet due to damage caused by Applicant. His deposit was seized, and the balance of the cost of the carpet was also charged to Applicant. The garnishment balance decreased from \$1,869 in June 2021 to \$1,754 in February 2022; therefore, there is some evidence of Applicant making payments toward this debt, as the balance has reduced over time. However, he failed to produce documentation that he resolved it in March 2022, as he asserted. (GE 5-6; Tr. 61-67, 82-83, 85-87)

The unalleged \$14,712 writ of garnishment remains unresolved despite Applicant’s assertion that he is currently making payments. He testified that he lived in an apartment from May 2017 until September 2017. He moved out after he realized he could not afford the \$2,200 monthly rent. He unsuccessfully tried to break the lease, and the apartment complex started garnishing his wages in October 2017 for the remainder of the lease. According to Applicant, he established a payment arrangement with the creditor in January 2022, and this is the only debt that remains outstanding, with a balance of \$10,000. The documentary evidence reflects that the creditor renewed its garnishment in May 2022. (GE 5-6; Tr. 67-71, 82, 85-87)

The \$126 and \$101 fines alleged in SOR ¶¶ 1.o and 1.p relate to traffic offenses that occurred in 2018 and 2017, respectively. Applicant testified that he paid both tickets and would provide supporting documentation, but failed to do so. (GE 7; Tr. 72-73, 82)

At the hearing, Applicant testified he purchased a home in March 2022 for \$550,000. He used his Servicemen’s Readjustment Act of 1944 (GI Bill) benefits to purchase the home. He argued that he qualified for financing, because he resolved the debts alleged in the SOR. He testified that his divorce negatively affected his finances, as his ex-wife abused her general Power of Attorney during his deployment in 2013 to 2014, by taking loans and credit cards out in his name, including some of the SOR allegations. Additionally, she overspent and failed to pay bills. She incurred approximately \$14,000 of debt in his name and took \$10,000 of income he had saved. (Tr. 30, 78-80)

Applicant is current on the child support obligations for his oldest son, which is \$715 monthly. He is not currently required to make payments for his younger son. His wife maintains a written budget, but he did not provide a copy of it after the hearing. He could not remember his annual salary. At the time of the hearing, he had between \$4,000 and \$5,000 in savings and approximately \$26,000 in his 401(k). He has filed his state and federal income tax returns and has no tax-related debt. He and his wife are currently attempting to secure a financial advisor. He has not disclosed or discussed the debts alleged in the SOR with his supervisor or Facility Security Officer. (Tr. 33-34, 73-77, 88)

I held the record open, in part, to allow Applicant to submit his DD-214 and other documentation regarding the awards and decorations he received while serving in the Navy. He did not provide this documentation, but testified that he was named the Blue Jacket of the Quarter while stationed onboard an aircraft carrier, Junior Sailor of the

Quarter, and Junior Sailor of the Year at a shore command. He also received two Navy Achievement Medals. He completed three full deployments and two smaller Pacific Rim deployments aboard ships. He currently has a 75 percent disability rating related to his military service. Since he started working for his current employer, he has received promotions and “great evaluations each year.” (Tr. 36-37, 54-55, 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; and
- (c) a history of not meeting financial obligations.

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 ex-wife's mismanagement of his financial affairs during one of his deployments between 2013 and 2014; however, he

failed to demonstrate that he acted responsibly in the intervening years to address his delinquent debts. The record lacks evidence of him making proactive payments toward any of his alleged delinquent debts. There is evidence that two of the alleged debts were resolved; however, one debt was resolved through an involuntary garnishment. Applicant claimed one debt was settled; however, he failed to provide evidence of how much he paid to settle the debt. According to Appeal Board jurisprudence, Applicant is responsible for proving reasonably available corroborating documentation to show debt resolution. He did not meet his burden of showing his debts were resolved.

Applicant's failure to provide documentation to demonstrate that he has resolved or is resolving his debts as he claimed during his multiple interactions with the government investigator between September 2019 and March 2020; in his August 2021 response to the SOR; and before, during, or after his August 2, 2022 hearing, 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 deployments. 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.l:	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