



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



In the matter of:)
)
) ISCR Case No. 20-03692
)
Applicant for Security Clearance)

Appearances

For Government: Carrol J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2022

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On April 13, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

On May 8, 2021, Applicant answered the SOR, and 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 October 12, 2021, including

items 1 through 4. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted documents in response that are marked as Applicant Exhibit (AE) A through H.

The case was assigned to me on February 9, 2022, and I reopened the record on March 10, 2022. Department Counsel and Applicant submitted additional documents that have been marked as Item 5, and AE I through AE T. Other email communications have been marked as Hearing Exhibit 1. All items and exhibits are admitted into evidence without objection.

Findings of Fact

Applicant is 45 years old. He served on active duty in the United States Air Force from October 1998 to July 2013 and in the Air Force reserve until July 2015; he received an honorable discharge. He attended three universities, two colleges and a computer learning center from 1995 to 1997, 2005 to 2009, and 2013 to 2015, and earned associate's degrees in 2006 and 2008. He married in April 2012 and divorced in May 2014. He has one son (age 19), and reported paying approximately \$400 per month in child support. He has worked as a senior system administrator since February 2018 and in various information technology positions since August 2013. (Item 3)

The SOR alleges nine delinquent debts, totaling approximately \$53,899, and that applicant falsified material facts in his security clearance application (SCA) by denying that he had financial problems and failing to disclose the delinquent debts alleged in the SOR. Applicant admitted the allegations at SOR ¶¶ 1.a, 1.b, 1.c, 1.h, 1.i, and 2.a, with explanations. He denied the allegations in SOR ¶¶ 1.d, 1.e, 1.f, and 1.g, with explanations. (Item 1)

Applicant reported no financial issues in his January 2020 SCA. He denied that, in the previous seven years, he had defaulted on any type of loan, had debts placed for collection, had any credit account charged off, or that he had been more than 120 days' delinquent on any debt. He denied that he was utilizing or seeking assistance from a credit counseling service or similar entity to resolve his financial difficulties, and also denied that he was then over 120 days' delinquent on any debt. (Item 2)

Applicant was interviewed by a government investigator in May and June 2020. During the May 2020 interview, he initially reported no adverse financial issues in the previous seven years, and said that he paid his debts on time. After the investigator confronted him with adverse financial information, Applicant acknowledged that he had experienced financial difficulties since 2013. He attributed his financial issues to a reduction in income after his overseas military allowances ended when he returned to the United States, costs associated with transition from active military service, credit card debt from the purchase of household items, child support, divorce costs, and financial support for his parents who had health issues. He admitted that he had not listed his financial difficulties in the SCA because those issues could negatively affect adjudication

of his application. He reported an annual salary of \$111,000; disposable income of \$600 monthly; a \$3,200 emergency fund; and \$43,000 in stocks. He said that he completed courses on saving (2014) and investing (2019). (Item 3)

The evidence concerning debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a, 1.b, and 1.c: student loan collection accounts totaling \$9,844 (\$5,027, \$2,784, and \$2,033 respectively). The May 2020 credit report reflects the student loans as in collection with balances of \$4,758; \$2,635; and \$1,924, respectively. The student loans accounts were opened from November 2013 to September 2015, and later assigned to the Department of Education for collection. Applicant reported that in 2016 the college he attended was investigated for deceptive practices and that the student loans were placed in forbearance. He said that in 2019, the Department of Education informed him that he was not responsible for those loans, and that in May 2020, the U.S. Treasury refunded payments he had made on those student loans. He admitted each allegation, reported the loans were discharged, and provided documentary evidence that the debts alleged at SOR ¶¶ 1.a and 1.b had been discharged, and that the debt alleged at SOR ¶ 1.c had been settled. He said that he did not list these student loans in his SCA because he thought that he was not responsible for them. These debts are resolved. (Item 1 at page 11, Item 3, Item 5 at pages 7-9; AE A, I, J, N, O)

SOR ¶¶ 1.d and 1.e: collection account for \$20,384, and charge account charged off for \$19,173. The May 2020 credit report reflects two accounts with the same account number charged off by a creditor for \$19,173 and closed in June 2014, and placed for collection by a different creditor in June 2014, with an account balance of \$20,384. Applicant reported the debt was a \$15,000 personal loan that he obtained to assist with his financial difficulties and that he could not afford to make the required payments. He said that he did not report this debt in his SCA because he disputed the account balance. He stated that the two debts alleged in the SOR were for the same debt and said that he would contact the creditor and set up a payment plan in June 2020. In response to the SOR, he denied both allegations, and has submitted documentary evidence that both accounts do not appear on recent credit reports. He provided no documentary evidence that he contacted the creditors, made payments on or otherwise resolved the debts. I find that the debt alleged at SOR ¶ 1.e, was acquired by a different creditor and placed for collection as alleged at SOR ¶ 1.d. When the same conduct is alleged more than once in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.e in Applicant's favor on that basis. The account alleged at SOR ¶ 1.d has not been resolved. (Items 1, 3, 4, 5; AE G, P, Q)

SOR ¶ 1.f: collection account for \$2,408. The May 2020 credit report reflects an account balance of \$2,708, and that the debt was assigned for collection in 2015. Applicant reported that the account was a delinquent credit-card account, that he did not recall when he last made a payment on the account, and that he would contact the creditor and make an immediate payment. He said that he did not disclose this account in his SCA

because he did not want to. In June 2020, he provided evidence that he entered a payment plan with an initial payment due in July 2020 and final payment due in February 2021. In response to the SOR, he denied the allegation and has provided documentary evidence that the account was removed from his credit report in August 2020. He provided no documentary evidence that he made payments under the payment plan, or otherwise resolved the debt. The debt has not been resolved. (Item 1 at page 12-13, Items 3, 4, 5; AE G, P, Q, T)

SOR ¶1.g: collection account for \$1,052. The May 2020 credit report reflects this account as assigned for collection in January 2020 with an account balance of \$1,052. Applicant reported that he disputed the validity of the debt, stating that in 2013 a telecommunications service provider charged him a fee for failing to return equipment that he had returned. He said that he had submitted a receipt reflecting return of the equipment to the creditor. He did not list this account in his SCA because he disputed its validity. He said that he would contact the creditor in June 2020. He denied the allegation, and has submitted documentary evidence that the account has been removed from his credit report. He provided documentary evidence reflecting resolution of a different debt with a sister company that was also listed in the May 2020 credit report. He provided no documentary evidence that he contacted the creditor, disputed, made payments on, or otherwise resolved this debt. The debt has not been resolved. (Item 4 at pages 10, 12, 13, 15, Item 5 at page 10; AE F, G, P, R)

SOR ¶1.h: credit account charged off for \$807. The May 2020 credit report reflects this account as charged off in July 2014. Applicant said that he made payments on the account until 2014, but stopped making payments because he disputed a charge. He said that he did not disclose this debt in his SCA because he disputed the amount and hoped to resolve the matter. He admitted the allegation and provided documentary evidence that the account had been removed from his credit report. He provided no documentary evidence that he contacted the creditor, disputed or made payments on the debt, or resolved this debt. The debt has not been resolved. (Items 3, 4; AE G, P, Q)

SOR ¶1.i: credit account charged off for \$231. The May 2020 credit report reflects this account as charged off for \$231. Applicant reported that this debt was for unauthorized charges in 2014. He reported that the credit union could not determine who had made the disputed charge. He said that he did not list this account in his SCA because the investigation was inconclusive and he did not think that he needed to make payment on the account. He admitted the allegation and provided documentary evidence that the account had been removed from his credit report. He provided no documentary evidence that he contacted the creditor, disputed, or otherwise resolved the debt. The debt has not been resolved. (Items 3, 4; AE G, P)

Applicant admitted that he intentionally falsified material facts in his January 2020 SCA regarding his financial account delinquencies and deliberately failed to disclose the delinquent debts alleged at SOR ¶¶ 1.a to 1.i, because he feared truthful responses would hurt his chances of retaining a security clearance. He reported experiencing a difficult couple of years including six months of unemployment, providing financial assistance to

his parents, relocating from Hawaii, and a costly divorce. He said that he had held a security clearance for many years, was a responsible person, lived modestly, and was a dependable, excellent worker. He noted that he received four medals for performance in the Air Force, was selected as Noncommissioned Officer of the Month and Quarter, and had been recognized as a member of the Weapons Load Crew of the Year. He requested forgiveness for his lack of candor and a second chance. (Item 1)

The record includes documentary evidence that Applicant worked with a credit repair service, and resolved a number debts not alleged in the SOR. Recent credit records provided by Applicant reflect only three delinquent accounts, none of which were alleged in the SOR. He did not provide documentary evidence of his current financial budget, savings or disposable income. Any derogatory information not alleged in the SOR will not be considered for disqualifying purposes. However, it may be considered in the application of mitigating conditions and in a whole-person analysis. (Items 1, 5; AE B, C, D, E, F, G, H, K, L, M, O, P, Q, R, S)

Policies

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.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the disqualifying and mitigating conditions in the adjudicative guidelines (AG). 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 commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by the Government. Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of the national security." 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 2013. 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 person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

(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.

Applicant incurred the debts alleged in the SOR totaling approximately \$53,899 from 2013 through May 2020. He provided documentary evidence that the student loan debts alleged at SOR ¶¶ 1.a, 1.b, and 1.c, totaling \$9,844, were discharged or settled by the Department of Education because the school he attended had engaged in deceptive practices. I have also found that the \$19,173 debt alleged at SOR ¶ 1.e duplicates the debt alleged at SOR ¶ 1.d, and resolved SOR ¶ 1.e in his favor.

Applicant provided documentary evidence that the debts alleged at SOR ¶¶ 1.d, 1.f, 1.g, 1.h, and 1.i, totaling approximately \$24,882, do not appear on recent credit reports. "[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." See ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). "Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved." ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 12, 2017) (citation omitted). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency. See 15 U.S.C. § 1681c. The debts alleged at SOR ¶¶ 1.d, 1.f, 1.g, 1.h, and 1.i were first delinquent from 2013 to 2015.

AG ¶ 20(a) is not fully established. The debts alleged at SOR ¶¶ 1.a, 1.b, 1.c, and 1.e have been resolved. However, Applicant did not provide documentary evidence that he made payments on, or otherwise resolved the long-standing debts alleged at SOR ¶¶

1.d, and 1.f through 1.i. His conduct casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment or underemployment, divorce, reduction in income, and his parents' unexpected medical expenses were largely beyond his control. However, he did not provide sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) is not fully established. Applicant presented evidence that he worked with a credit repair service, and claimed that he had taken courses on investing and saving. However, he failed to provide sufficient evidence that he received financial counseling or has a budget, and he presented insufficient evidence that the debts alleged at SOR ¶¶ 1.d, 1.f, 1.g, 1.h, and 1.i were being resolved.

AG ¶ 20(d) is not fully established. The debts alleged at SOR ¶¶ 1.a, 1.b, 1.c, and 1.e have been resolved. Applicant provided evidence of a payment plan to resolve the debt alleged at SOR ¶ 1.f, but submitted no evidence that he complied with that agreement. An important element of good faith and responsible conduct is maintaining contact with creditors. He provided no documentary evidence that he has contacted the creditors or otherwise resolved the debts alleged at SOR ¶¶ 1.d, 1.g, 1.h, and 1.i.

AG 20(e) is not established. Applicant averred that he disputed several of the debts alleged in the SOR, but submitted no documentary evidence in support of his assertions, or of actions he has taken to resolve those issues.

The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has good intentions, but his good intentions have not yet evolved into a reasonable and credible plan that includes the debts alleged at SOR ¶¶ 1.d, 1.f, 1.g, 1.h, and 1.i.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he deliberately failed to disclose his financial problems in his SCA because he feared that his financial delinquencies would negatively impact adjudication of his security clearance. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶¶ 17(a), 17(c), and 17(d) do not apply. Applicant intentionally falsified material facts in his January 2020 SCA by denying that he had financial problems and failing to disclose the delinquent debts alleged in the SOR. Four months later he told a Government investigator that he had no financial problems and paid his debts on time. He acknowledged his financial problems only after the investigator confronted him with adverse credit information reflecting delinquent accounts from 2013 to 2020. He has since admitted that he was dishonest because he did not want his financial problems to negatively impact adjudication of his security clearance. Although he has acknowledged his misconduct, he has presented insufficient evidence of other positive steps taken to change his behavior, or that the behavior is unlikely to recur.

An act of falsification has security significance independent of any significance of the underlying conduct. ISCR Case No. 01-19278 at 6 (App. Bd. Apr. 22, 2003). The mitigation of the underlying conduct has little bearing on the security significance of the falsification. ISCR Case No. 08-11944 at 2 (App. Bd. Aug. 15, 2011) (citations omitted). It is foreseeable that an applicant who fails to answer security clearance application questions according to their reasonable and accepted meanings may well fail to disclose other significant matters that should be brought to the attention of the Government, which

is a requirement of those who have access to classified information. ISCR Case No. 15-08163 at 4 (App. Bd. Oct. 25, 2017).

Applicant's conduct continues to cast doubt on his reliability, trustworthiness, and good judgment.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered that Applicant is 45 years old, served approximately 17 years in the Air Force and received multiple awards and recognition for his service including four medals. I also considered that he has worked in various information technology positions since leaving active duty in 2013 including as a senior system administrator since February 2018.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct.

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.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant

Conclusion

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

Eric C. Price
Administrative Judge