



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



In the matter of:)
)
) ISCR Case No. 21-02675
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2022

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 5, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). Applicant responded to the SOR, and requested a hearing before an administrative judge. The case was assigned to me on June 21, 2022.

On June 24, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for July 12, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through GE 3 into evidence. Applicant offered Exhibits (AE) A through AE C into evidence. All exhibits were admitted into evidence without objection. Applicant testified. I received the hearing transcript on August 9, 2022. The record remained open until August 12, 2022, to give Applicant time to submit additional documentary evidence. He did not submit any documents and the record closed.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the debts alleged in SOR ¶¶ 1.a through 1.m.

Applicant is 35 years old and divorced since 2018. He and his former wife separated in 2012 and have a teenage daughter. He served on active duty in the Marine Corps from August 2005 to December 2013. He deployed twice, once to the Middle East in 2009 on a combat deployment, and once to Asia in 2007 for nine months. He was a sergeant (E-5) when he received an honorable discharge. He held a security clearance while serving. (Tr. 26-29; GE 1 at 20, 37)

After leaving military service, Applicant worked for Students Veterans of America from January 2014 to May 2018. He also attended college during this timeframe, but did not complete a degree. After that he was unemployed from May 2018 to August 2018 while he helped his mother who was diagnosed with cancer. He subsequently worked for private security companies including a family business. These positions paid between \$13 and \$16 per hour. In October 2020, Applicant applied for a position with a defense contractor and submitted a security clearance application (SCA). That position did not materialize. On August 2, 2021, he started a position with another defense contractor where he continues to work, earning about \$24 per hour. His annual gross salary is \$50,000. (Tr. 14-23; GE 1 at 12-19)

Applicant attributed his financial problems to being unemployed while he was caring for his mother for three to four months in 2018 after she was diagnosed with cancer. He used credit cards to pay his expenses, and his mother's bills. For a number of years afterwards, he was underemployed in low-paying positions. In addition, he was paying \$650 a month in child support for his daughter. (Tr. 24, 29-33)

In his Answer, Applicant denied owing the alleged debts because they had fallen off of his credit report and they were beyond the statute of limitations and legally unenforceable. He intends to address delinquent debts that are on his credit bureau report (CBR), but not those which are no longer reported. (Tr. 35, 40) In April 2022, he hired a credit repair company to help improve his credit. (AE C) The company did not provide budget counseling. (Tr. 41, 51) He tried obtaining a consolidation loan in 2018, 2019, and 2021 to help resolve his outstanding debts. He was denied each time because he did not qualify. (Tr. 47-48)

Based on CBRs from January 2021 and December 2021, the SOR alleged thirteen delinquent debts totaling about \$19,000, which became delinquent between 2014 and 2021. (GE 2, GE 3) The status of each debt is as follows:

1. The debt in SOR ¶ 1.a for \$10,857 is the balance owed to an automobile loan company for a 2010 car Applicant purchased for his ex-wife. It was repossessed in January 2014, and subsequently sold for an amount less than the balance owed on the loan. He acknowledged that it is his debt. He negotiated a payment plan with the creditor, but was unable to make the

- payments, due to a lack of income. He decided to allow the debt to fall off of his CBR, which it did. He no longer intends to pay it. (Tr. 35- 39)
2. The debt in SOR ¶ 1.b for \$1,178 is owed to a finance company. Applicant admits it is his debt, but he cannot recall what it relates to. It went into collections in 2014. He does not intend to address this debt because it has fallen off of his CBR. (Tr. 39-40).
 3. The debt in SOR ¶ 1.c for \$1,099 is owed to an e-commerce company for retail purchases Applicant made. He admits that it is his debt. He stopped making payments on the debt in 2018 when his mother was sick, and he was unemployed for the summer. The debt is listed on his July 2022 CBR and he intends to pay it. His credit repair company has contacted the creditor to resolve it. (Tr. 42-45; AE A).
 4. The debt in SOR ¶ 1.d for \$997 is owed to a cell phone company. Applicant admits that this is his debt. It went into collections in 2018. According to his July 2022 CBR, it is unpaid. He intends to pay it. His credit repair company will contact the creditor to resolve it. (Tr. 45-47; AE A)
 5. The debt in SOR ¶ 1.e for \$801 is owed to a company for a credit card Applicant used in 2018 for expenses. He obtained a second credit card from the company and intends to have his credit repair company resolve this old debt. According to his July 2022 CBR, the debt is in collections and is unpaid. (Tr. 49, 52; AE A)
 6. The debt in SOR ¶ 1.f for \$724 is owed to a company for a credit card he used in 2018. He admits that it is his debt, and he intends to have his credit repair company contact the creditor to resolve it. (Tr. 53)
 7. The debt in SOR ¶ 1.g for \$612 is owed to a company for another credit card Applicant used in 2018. It was charged off in 2019 and is listed on his July 2022 CBR. He intends to have his credit repair company contact the creditor to resolve it. (Tr.53; AE A).
 8. The debt in SOR ¶ 1.h for \$329 is owed to company for a credit card that was charged off in 2017. Applicant admits the debt. It is listed on his July 2022 CBR. He intends to have his credit repair company contact the creditor to resolve it. (Tr. 54; AE A)
 9. The debt in SOR ¶ 1.i for \$188 is owed to a company that helps people build credit by making loans to them. Applicant took this loan out in April 2021. The debt was placed in collections in September 2021. He admits the debt. It is listed on his July 2022 CBR. He intends to have his credit repair company contact the creditor to resolve it. (Tr. 55; AE A).

10. The debt in SOR ¶ 1.j for \$388 is owed to an e-commerce company. Applicant admits that it is his debt. It went into collections in 2018 and is no longer on his credit report. He does not intend to resolve it. (Tr. 56)

11. The debt in SOR ¶ 1.k for \$541 is owed to a company for a credit card. Applicant said he resolved the debt for less than the alleged amount and he paid the balance. (Tr. 57) He said he has a receipt proving that it is resolved. His July 2022 CBR reports that it was a paid charge-off. (Tr. 56-58; AE A) It is resolved.

12. The debt in SOR ¶ 1.l for \$1,090 is owed for student loans Applicant took out between 2014 and 2018. Applicant said this loan went into collections in May 2018 and has since fallen off of his CBR. He never made a payment on this loan. (Tr. 59-60)

Applicant has four or five other student loans that are unpaid. He thinks his total student loan debt is about \$19,000. He intends to address them after he resolves his other debts. They are in deferment until the end of 2022. (Tr. 69, 74-75)

13. The debt in SOR ¶ 1.m for \$56 is owed to a company for a book Applicant purchased while in college. It went into collection in May 2018. He asserted that he returned the book, but the company does not have a receipt for it. He does not intend to pay it. (Tr. 60-61).

Applicant submitted his budget. His net monthly income is \$3,232 and his monthly expenses are \$2,780, including his \$800 child support payment. He has about \$452 remaining at the end of the month. He intends to apply to the Veterans Affairs (VA) for disability. His daughter is moving to Japan this year, at which time his child support obligation will stop. He has some money in savings. (Tr. 32, 61-65; AE A) His girlfriend with whom he has lived for the past two years works and contributes to their monthly expenses. (Tr. 66)

Applicant said he is still learning about finances and credit issues. He did not realize that delinquent debts, including ones that have fallen off his credit report, could jeopardize his ability to obtain a security clearance. The issue never arose during his previous security clearance investigations. (Tr. 76-77) He intends to resolve his financial problems because he wants to purchase a piece of property. (Tr. 80)

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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."

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." 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 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.

The guideline lists conditions that could raise security concerns under AG ¶ 19. The following two are potentially applicable in this case:

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

Applicant accumulated delinquent debts and experienced financial problems, beginning in 2014 and continuing into the present. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence does not establish mitigation under AG ¶ 20(a) because Applicant's delinquent debts have been ongoing since 2014 and all of them remain unresolved, except one. Applicant helped care for his ill mother during the summer of 2018 and also provided financial support for her. Subsequent to that summer, he held low-paying positions and experienced short periods of unemployment until August 2021, when he obtained his current job. Those were circumstances beyond his control. However, he did not provide sufficient evidence that he attempted to manage his debts as they were accumulating, which is necessary to establish full mitigation under AG ¶ 20(b). Applicant has not participated in budget or credit counseling, and there is minimal evidence to show

that his financial situation is under control. The evidence does not establish mitigation under AG ¶ 20(c). Applicant paid and resolved the debt in SOR ¶ 1.k. The evidence establishes mitigation under AG ¶ 20(d) as to that debt, but does not provide mitigation for the others which remain unresolved.

Applicant stated that he did not intend to resolve debts that had fallen off of his credit report because the statute of limitations had run. In ISCR Case No. 17-01473 at 5 (App. Bd. Aug. 10, 2018) (quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011) (internal citations omitted)), the Appeal Board stated:

The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.

Several of Applicant's delinquent debts have been dropped from his credit report. "[T]hat some debts have dropped off [one's] credit report is not meaningful evidence of debt resolution." (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))).

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 Applicant's eight years of honorable service in the Marines, his deployments, and his credible testimony. However, at this time, Applicant has not established a record of responsibly managing his debts. There is insufficient evidence to resolve my concerns about Applicant's eligibility for a security clearance at this time. He did not mitigate the security concerns raised under the financial considerations guideline.

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.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l and 1.m:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Shari Dam
Administrative Judge