



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



In the matter of:)
)
-----) ISCR Case No. 21-02011
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided sufficient evidence to mitigate the national security concerns arising from his problematic financial history and his personal conduct. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 11, 2019. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on November 1, 2021, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on December 1, 2021 (Answer), and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On January 6, 2022, Department Counsel submitted the

Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant was sent the FORM on the same day, and he received the FORM on June 6, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM (Response) on June 28, 2022. The SOR and the Answer (Items 1S and 1A, respectively) are the pleadings in the case. Items 2 through 7 are admitted without objection. The case was assigned to me on September 6, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old, unmarried, and with no children. He served on active duty in the U.S. Navy from February 2009 until November 2018, when he was honorably discharged. From December 2018, he has been employed by a defense contractor. (Item 2.) In his Answer, Applicant explained that when he left the Navy in November 2018 and became employed by a defense contractor, he took a pay cut. In addition, his job required long periods at sea. While at sea, he had limited Internet connectivity and only DSN (Defense Switched Network) phone service. That made it difficult for him to contact his creditors. When he is shipboard, he is able to save money as his room and board are paid. His plan is to save funds and pay his debts in full, which he "was able to do with most." At the time of his December 2021 Answer, he had been at sea since mid-September 2021. (Item 1A.)

In his October 15, 2019 Personal Subject Interview (PSI), he responded as follows when asked about his financial situation:

[His] financial situation is good but [he] is not meeting all of his financial obligations on time. [He] took a pay cut when he left the Navy and he is having a hard time paying his debt. [He] has a job but he is only able to pay necessities as he only gets paid when he is at sea [Applicant then discussed three credit card accounts in default. He said that during one foreign port call, he tried to contact those creditors but had "a hard time."] [He] was asked if he had any other bills or debts turned over to a collection agency and [he] said yes but he could not recall the exact debts. . . . [He] was confronted with [other defaulted debts]. (Item 3.)

Under Guideline F, the SOR alleged that Applicant has 10 delinquent debts totaling \$43,230. (Item 1S.) The Government's credit reports support those allegations. The SOR debts were incurred between 2018 and 2020. (Items 4 through 7.) Applicant admitted those allegations, with explanations that are discussed below. (Item 1A.)

SOR ¶ 1.a. is a credit card account charged off for \$14,267. (Item 1S.) Applicant explained that this account is being paid by a voluntary wage garnishment that has reduced the balance to \$10,959. The September 15, 2021 wage garnishment documents show the total balance due of \$14,410, with no reduction of the balance due. He also

stated that he intends to contact the creditor to arrange a payment plan once he is off sea duty. (Item 1A.) In his Response, he stated that this account was paid in full on May 24, 2022. His document supports that claim. (Response.) This debt has been resolved.

SOR ¶ 1.b. is a collection account charged off for \$12,157. (Item 1S.) Applicant explained that he has a payment plan for \$1,000 per month. His document shows one payment of \$1,000 on November 17, 2021. (Item 1A.) In his Response, his document shows six monthly payments from November 2021 to March 2022 that total the amount alleged in the SOR. (Response.) This debt has been resolved.

SOR ¶ 1.c. is a credit card account charged off for \$3,165. (Item 1S.) Applicant explained that he “tried contacting via email but was not given the option to do so.” He intended to pay in full once he is off sea duty. (1A.) In his Response, his document shows a payment in full on December 9, 2021. (Response.) This debt has been resolved.

SOR ¶ 1.d. is a credit card account charged off for \$509. (Item 1S.) Applicant explained that he “tried contacting via email but was not given the option to do so.” He intended to pay in full once he is off sea duty. (1A.) In his Response, his document shows a payment in full on December 9, 2021. (Response.) This debt has been resolved.

SOR ¶ 1.e. is cell phone account placed for collection for \$503. (Item 1S.) Applicant explained that he contacted the collection agency and was told it no longer had that account. His document advised him that the account had been returned to the original creditor. (Item 1A.) In his Response, he stated that the original creditor had no records of this account and that the matter was closed. (Response.) This debt has been resolved.

SOR ¶ 1.f. is a judgment charged off for \$4,188. (Item 1S.) Applicant explained that this judgment was paid in full. His documents show that this judgment was paid in full on November 20, 2021. (Item 1A.) This debt has been resolved.

SOR ¶ 1.g. is a bank account placed for collection for \$4,082. (Item 1S.) Applicant explained that this account was paid in full with a discount for a one-time payment on November 17, 2021. His documents support that claim. (Item 1A.) This debt has been resolved.

SOR ¶ 1.h. is an account charged off for \$1,602. (Item 1S.) Applicant explained that this account was paid in full on November 20, 2021. His document supports that claim. (Item 1A.) This debt has been resolved.

SOR ¶ 1.i. is a medical account delinquent for \$1,541. (Item 1S.) Applicant explained that this account was paid in full on November 22, 2021. His document supports that claim. (Item 1A.) This debt has been resolved.

SOR ¶ 1.j. is a bank account charged off for \$1,216. (Item 1S.) Applicant explained that he emailed the creditor but has not received a response. He intends to contact the

creditor and pay in full once he is off sea duty. (Item 1A.) In his Response, his document shows that this debt was paid in full on June 24, 2022. (Response.)

Under Guideline E, SOR ¶ 2.a. alleged that Applicant deliberately failed to disclose in his SCA the delinquent accounts listed in SOR ¶¶ 1.a. through 1.e. (Item 1S.) Applicant did not disclose any of the SOR debts in his SCA. (Item 2.) He admitted this allegation as follows:

[T]his was uncharacteristic of me. I was confronted with the facts and told my investigator/interviewer. I know I made a mistake and I deeply regret it. I believe I had a lapse in judgment when I did this. I was overwhelmed, embarrassed, and scared of what may happen if I lost my job. I understand that that is not grounds to hold any information and it's no excuse. (Item 1A.)

Law and Policies

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

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

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

The SOR debts are established by the Government's credit reports and Applicant's admissions. AG ¶¶ 19(a) and 19(b) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

- (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; and
- (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.

Applicant's SOR debts arose in the 2018 to 2020 timeframe. And they remained in default at the time the SOR was issued. So, these debts did not arise that long ago. Also, these debts were not infrequent. Thus, AG ¶ 20(a) does not apply to mitigate these debts

Mitigating factor AG ¶ 20(b) has two principal elements. First, there must be "conditions" "largely beyond the [applicant's] control" that caused the financial problem.

Second. The [applicant] must have “acted responsibly under the circumstances” that he was confronting.

In this case, Applicant faced several challenges when he was honorably discharged from the Navy. Initially, he took a pay cut, when he gained employment in the private sector. When he did find employment, the job required lengthy tours at sea. Next, being at sea made Internet and telephone connections with his creditors difficult. In addition, he was only paid while he was serving shipboard. The record shows that during at least one foreign port call, he contacted several creditors but was unable to accomplish any debt resolution. The foregoing conditions were “largely beyond” Applicant’s control, thus satisfying the first element of AG ¶ 20(b).

The next inquiry is whether Applicant acted responsibly under those adverse circumstances. In this case, he took advantage of serving at sea and having his room and board provided at no cost. This benefit allowed him to save a fund to pay his creditors when he returned to shore. That in itself was responsible conduct. But when he did return from his shipboard deployment, he promptly resolved nine of his ten SOR debts by paying them in full. He paid four of those in November 2021, two in December 2021, and three in early to mid-2022. That conduct is responsible debt management. The second element of AG ¶ 20(b) is satisfied. Applicant’s SOR debts are mitigated under AG ¶ 20(b).

Guideline E - Personal Conduct

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant’s answer but all relevant circumstances. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). Under Guideline E for personal conduct, the concern is that “[c]onduct 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.” A statement is false or dishonest when it is made deliberately (knowingly and willfully).

In this case, the SOR alleged that Applicant falsified facts by failing to disclose his financial delinquencies his financial difficulties in his SCA. He unqualifiedly admitted that allegation. This conduct falls squarely within AG ¶ 16(a), which states in pertinent part:

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations.

AG ¶ 17(a) states in pertinent part a mitigating condition that may mitigate that disqualifying condition:

[The] individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

In this case, after falsifying by omission his SCA, Applicant's next opportunity to correct that omission was during the PSI. In that interview, he was asked an open-ended question about his "financial situation." He answered that it was "good" but volunteered that he was "not meeting all his financial obligations on time." He then further volunteered that his pay cut gave him a "hard time" paying his debts. Without any prompting, he spoke about three credit card debts that were in default and volunteered that he had other accounts in default but could not recall them. So far, in this exchange, he spoke truthfully without any prompting or confrontation. It was only after he professed no recollection of the specific other accounts in default that the investigator confronted Applicant with details of the other accounts. The PSI was conducted on October 15, 2019, over two years before the SOR was issued. So, Applicant was testifying about his defaulted accounts by memory, until being refreshed by the investigator about accounts that would eventually be in the SOR.

On this record, Applicant used the first opportunity afforded by the security clearance process to rectify his omissions in the SCA. He did so without having seen the SOR or being confronted by the investigator. I find that Applicant mitigated his omission under AG ¶ 17(a).

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. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis.

Under AG ¶ 2(a), 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 and the whole-person concept.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant mitigated the security concerns arising 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:	FOR APPLICANT
Subparagraphs 1.a.-j.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge