



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



In the matter of:)
)
) ISCR Case No. 20-02564
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

11/07/2022

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 25, 2018. On December 2, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on March 17, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 22, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 19, 2022, scheduling the hearing for June 14, 2022. The hearing was held via video teleconference as scheduled.

Government Exhibits (GE) 1 through 6 were admitted into evidence without objection. Applicant testified and submitted an exhibit marked as Applicant Exhibit (AE) A, and admitted without objection. The record was held open until July 1, 2022, for Applicant to supplement the record. He timely submitted exhibits collectively marked as (AE) B, which were admitted without objection. DOHA received the hearing transcript on June 27, 2022.

Findings of Fact

Applicant is a 47-year-old technical support employee for a Government contractor, employed since February 2022. He worked similar Government contract positions since 2015. He graduated from high school in 1993 and attended some college. He served in the U.S. Army from 1996 to 1999, and again from 2004 to 2014. He was honorably discharged. He married in 2005 and divorced in 2012. He remarried in 2012, separated in 2014 and divorced in 2016. He does not have children. He currently holds a secret level clearance.

The SOR alleges under Guideline F that Applicant has eight delinquent debts totaling about \$20,544. Applicant admitted to debts with a bank (SOR ¶ 1.b); the Department of Defense (SOR ¶ 1.c); a cable provider (SOR ¶ 1.f); and a credit card company (SOR ¶ 1.g). He denied debts owed to an apartment complex, insurance company, another general creditor, and a wireless provider. The evidence submitted by the Government supports all of the SOR allegations.

SOR ¶ 1.a is an apartment complex debt for \$9,620. Applicant claimed that this debt belonged to his ex-spouse, which she incurred in 2014 while they were separated. He stated in his Answer to the SOR that he was disputing the account. He testified that his ex-spouse moved to another state and apparently leased an apartment, and later left with an unpaid debt. His name appears as a joint account on his September 2020 credit bureau report (CBR), however he testified that he did not sign the lease or live in the apartment and alleged fraud by his spouse. He stated that he contacted a collection agent holding the debt in 2021, and was told that the account was closed and they were unable to collect on the debt. No documentary evidence was provided to support a dispute, contact with a collection agent, or of fraud. The account does not appear on his 2022 CBR. (AE B) It is unclear why the account has been deleted, but it may have been removed because it is beyond the typical seven-year reporting period.

SOR ¶ 1.b is a bank debt for \$4,710. Applicant stated in his Answer that he contacted the bank and was told that the debt was written off because it is more than seven years old. He testified that he incurred the debt in about 2014 after he left the military and was divorced from his first wife. He testified that he discussed the account with the bank about nine months before the hearing, and agreed to make \$100 per month payments beginning in December 2021. He provided an account statement that does not show the same account number or debt, and a 2022 CBR that shows a credit card account that does not match the alleged debt. (GE 5, AE A and B) There is insufficient

evidence showing Applicant has a repayment agreement or a payment plan, is making payments, or sought other efforts to resolve the delinquent account.

SOR ¶ 1.c is a charged-off debt owed to the Department of Defense for \$2,473. Applicant claimed in his Answer, that the debt resulted from “not turning paper work in on time after leaving the military.” He said it was being paid by IRS captures of his income tax refunds. In testimony, he said the debt was paid off in March 2022, and that he would provide a receipt. He claimed that he left the debt alone between 2014 and 2022, because of the IRS actions. No documentary evidence in support of these contentions was submitted.

SOR ¶ 1.d is a charged-off bank debt for \$1,263. In his Answer, Applicant claimed that the debt was incurred by his ex-spouse during their divorce. He claimed that his name was added to the account because he still had a joint savings account with his former spouse, and “so when she applied for the loan it added me into it.” He denied ever signing a loan agreement or agreed to be on listed on the loan. His ex-spouse has since filed bankruptcy, and the creditor is pursuing payment from him. (Ans.) In testimony, he said that his ex-spouse worked for the creditor in 2007 or 2008, and she agreed to a car loan in about 2010. Applicant has not pursued resolution of the debt, despite being able to pay it now. Applicant’s CBRs show the account as a charged-off joint account that was assigned in 2010, and the last activity was in 2015. (GEs 2-5) The debt no longer appears on Applicant’s 2022 CBR. It is unclear why the account has been deleted, but it may have been removed because it is beyond the typical seven-year reporting period.

SOR ¶ 1.e is a collection account for \$837. Applicant said in his Answer that he was unable to determine to whom the debt was owed or how it was incurred. In testimony, he said he has not contacted the creditor or collection agent, and was not in the state listed in 2015. He surmised that his ex-spouse opened the account. The debt appears on Applicant’s 2018 and 2020 CBRs, and show the collection account as an individual account, assigned in 2015, and defaulted in 2018. The CBR also lists the original collection agent. Applicant’s 2022 CBR no longer lists the account. It is unclear why the account has been deleted, but it may have been removed because it is beyond the typical seven-year reporting period.

SOR ¶ 1.f is a cable provider account placed for collection for \$315. Applicant agreed with the debt, but claimed that it was written off and not collectable as it is over seven years old. (Ans.) In testimony, he said he contacted the creditor and was told they did not have a record of the account. He last used the company in 2013, and claimed to have returned equipment as required. The account is no longer reflected on his 2022 CBR. It is unclear why the account has been deleted, but it may have been removed because it is beyond the typical seven-year reporting period.

SOR ¶ 1.g is a bank credit card account that was charged off for \$400. Applicant claimed in his Answer that the debt was written off and no longer collectable because it is over seven years old. (Ans.) In his Office of Personnel Management subject interview, he claimed that he never had a bank credit card from this company, but in testimony,

admitted he did have a credit card. He said he contacted the creditor in 2021 and was told the debt was written off and no record exists. It is no longer reflected on his 2022 CBR. It is unclear why the account has been removed, but it may be because it was beyond the typical seven-year reporting period.

SOR ¶ 1.h is a wireless provider debt for \$926. Applicant said this was a joint account in which he was removed after he separated. He testified that he went to the provider's store and asked to be removed from the account. He admitted to using this provider, but not since 2014. He said he called the provider in 2021 and was told he was not on the account. His 2018 CBR shows the account was assigned in 2015, and placed for collection in 2018. This account does not appear on subsequent CBRs. Applicant did not address any efforts to resolve the delinquent debt, rather it appears he contested its reporting as a joint account.

Applicant reported a gross pay of \$65,000, with a net remainder of \$1,000 after paying monthly expenses. He has about \$27,670 in a checking account, and about \$20,000 in a 401k retirement account. He claimed to have had unspecified financial counseling while in the military, but none since. He testified that he made significantly less income since leaving the military, has helped other family members with financial expenses, and paid his spouse's debts.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline F: Financial Considerations

The security concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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 has a history of not responsibly meeting financial obligations. He incurred debts while married and possibly while separated. His name apparently remained on joint accounts, but he claims that his ex-spouse fraudulently signed his name to contracts and credit agreements. Applicant has not provided sufficient evidence of fraudulent activity or efforts to correct or dispute the accounts. Any efforts to inquire into delinquent accounts were done after his security eligibility became an issue.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))). Also, an applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018))

Allowing the Defense Department to collect a debt through tax refund recoveries is not an appropriate or responsible method of resolving the debt. Applicant also claimed to have a payment plan with a credit card issuer, but insufficient documentary evidence in support of the plan was provided despite his offer in the hearing to provide such evidence. Applicant has also failed to contact creditors on the car loan and other debts in which he claimed was not his, despite evidence to the contrary in his credit report. Finally, contacting a creditor after a debt was written off does not display financial awareness or concern for financial matters.

Applicant has a long employment history and should have been in a position to address debts for which he is responsible, or challenge debts wrongfully charged to him. Relying on old accounts to drop off of his credit report is not sufficient to alleviate the Government's concerns with regard to his past debts or current financial responsibility.

The guideline encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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). The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations. That is, a judge may consider the underlying circumstances of these uncollectable debts in evaluating whether an applicant demonstrated good judgment, trustworthiness, and reliability. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

In addition, Applicant's credit reports indicate that several of his debts were in a collection or charged-off status and eventually they were dropped from his credit report. Showing that debts were dropped off a 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)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer (Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>).

Applicant presented no documentary evidence of recent or substantive financial counseling. Ignoring debts that one considers to be inappropriate or fraudulent does not equate to acting responsibly and in good faith. His failure to dispute fraudulent debts or otherwise address delinquent accounts puts into question his reliability, trustworthiness, and good judgment. He has not submitted sufficient documentary evidence of fraud or false accounts for which he is not responsible. Any efforts he made to dispute certain debts are unsupported by documentary evidence. Although Applicant's current financial position may be improved, his history of financial irresponsibility has not been adequately addressed, and his debts were not satisfactorily resolved. AG ¶¶ 20(a) - 20(e) do not apply.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant's military service and divorces. I remain unconvinced of his overall financial responsibility, efforts to resolve delinquent debts, and his ability, intent, and desire to meet his financial obligations in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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.h:	Against Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge