



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



In the matter of:)	
)	
)	ISCR Case No. 22-00008
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

Statement of the Case

On February 25, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR, Item 1) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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), implemented by DOD on June 8, 2017.

Applicant elected in his February 28, 2022, response to the SOR (Answer, Item 2), to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on March 21, 2022. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He responded to the Government's FORM on April 26, 2022, with documentation I collectively marked as AE A, and admitted in evidence without objection. The case was assigned to me on May 13, 2022. The Government's documents identified as Items 1 through 6 in the FORM are admitted in evidence without objection.

Amendment to the SOR

In its FORM, the Government amended the SOR, pursuant to ¶ E3.1.17 of the Directive, to add allegations numbered SOR ¶¶ 1.s to 1.z under Guideline F (financial considerations). In so doing, the Government asked Applicant to provide admissions or denials to the amended allegations in his response to the FORM. The Government also requested that Applicant's silence be construed as denials in the event that he did not admit or deny the amended allegations in his response to the FORM.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a to 1.r in his Answer, and he denied SOR ¶¶ 1.s to 1.z in his response to the FORM. He is 66 years old. He was previously married, the dates of which are not in the record, and he remarried in 2018. He has two adult children. As of his September 2021 background interview, he worked for his employer, a DOD contractor, since June 2018. He does not recall if he was granted a security clearance in 2010. As of his June 2021 security clearance application (SCA) and since December 2017, he lived in a home owned by his spouse. He previously owned a home from June 2006 to October 2016. (Items 1, 2, 3, 4; AE A)

The SOR and amended SOR alleged that Applicant had 18 delinquent consumer debts, totaling \$32,479 (SOR ¶¶ 1.a-1.f, 1.n-1.v, 1.x-1.z). It also alleged that he had 8 delinquent medical debts, totaling \$1,826 (SOR ¶¶ 1.g-1.m, 1.w). In addition to his admissions in his Answer, Applicant acknowledged in his SCA that he had financial issues. He also discussed his delinquent debts during his background interview. SOR ¶¶ 1.a through 1.r, 1.w, and 1.z are reported on a June 2018 credit bureau report, and SOR ¶¶ 1.a, 1.c, 1.e, 1.l, 1.n, 1.o, 1.p, and 1.s through 1.z are reported on a July 2021 credit bureau report. (Items 1-6)

Applicant attributed his delinquent debts to his separation and divorce; his period of unemployment from September 2017 to May 2018; and health issues. As indicated above, the dates of Applicant's marriage, separation, and divorce were not in the record. He indicated during his background interview that he was required, through the divorce, to pay the joint debts incurred during the marriage and provide \$30,000 to his former spouse so that he could keep the family home. He learned, after the divorce, that his former spouse had obtained a \$25,000 second mortgage on the home. He was unable to pay the mortgages, and the home was foreclosed. During his period of unemployment, he supported himself with personal loans and withdrawals from his 401(k) retirement account. He stated in his SCA that he was working with his creditors

to resolve his “credit issues.” In his Answer and response to the FORM, Applicant charted the status of his efforts to resolve his delinquent debts, but provided minimal documentation to corroborate his claims of payment. (Items 2, 3, 4; AE A)

Consumer debts

SOR ¶ 1.a is for a \$618 personal loan in collection. Applicant obtained this loan after his divorce and during his period of unemployment to assist with living expenses. He was unable to pay the loan and then forgot about it. He indicated during his background interview that he intended to contact the creditor to resolve this debt. He contacted the creditor in September 2021 in an attempt to resolve this debt. He did not provide documentation to show that he reached a resolution with the creditor and resolved, or was making efforts to resolve, this debt. (Items 4, 5, 6; AE A)

SOR ¶ 1.b is for a \$2,499 charged-off account. Applicant paid this debt in March 2022. (Item 5; AE A)

SOR ¶¶ 1.c and 1.t are for two charged-off loans, in the amounts of \$1,516 and \$1,759, respectively. Applicant obtained these loans after his divorce and during his period of unemployment to assist with living expenses. He was unable to pay the loans and then forgot about them. He indicated during his background interview that a law firm handling both debts contacted him, and he entered into a payment arrangement with the law firm of \$235 monthly to resolve these debts. He did not provide documentation to corroborate his claim. He stated in his response to the FORM that he paid SOR ¶ 1.c. Documentation reflects that he entered into a payment plan of \$100 monthly in April 2022 to resolve SOR ¶ 1.c, and he made one payment of \$100 in accordance with that plan. He did not provide documentation to show that he had made any further payments toward resolving SOR ¶ 1.c. (Items 4, 5, 6; AE A)

SOR ¶ 1.d is for a \$536 account in collection. Applicant stated in his response to the FORM that he requested a settlement with the creditor, but he did not indicate when he did so. He did not provide documentation to show that he settled or otherwise resolved this debt. (Item 5; AE A)

SOR ¶ 1.e is for a \$1,483 retail account in collection, and SOR ¶ 1.y is for another account with the same retailer, in collection for \$1,483. While Applicant indicated during his background interview that these are duplicate accounts, they are reported on the 2021 credit bureau report with different account numbers. He indicated that these debts belonged to his former spouse, and she was supposed to pay them after their divorce. He indicated that he contacted the collection agency for SOR ¶ 1.e, and the collection agency informed him that it did not have a record of any open accounts associated with him. As such, he did not intend to pay these debts. In March 2022, the creditor for SOR ¶ 1.e offered him a payment plan of \$123 monthly to resolve this debt. He did not provide documentation to show that he made any payments in accordance with a payment plan for SOR ¶ 1.e, or of his efforts to resolve SOR ¶ 1.y. (Items 4, 6; AE A)

SOR ¶ 1.f is for a \$1,283 account in collection. Applicant stated in his response to the FORM that he was making payments of \$100 monthly to resolve this debt. In March 2022, the creditor offered him a payment plan of \$100 monthly to resolve this debt. He did not provide documentation to show that he made any payments in accordance with a payment plan for this debt. (Item 5; AE A)

SOR ¶ 1.n is for a \$7,993 charged-off account. Applicant indicated during his background interview that his former spouse obtained this personal loan for her use, and was responsible for repaying it after their divorce. He indicated during his background interview that he disputed the debt with the creditor when the creditor contacted him about it. He stated in his response to the FORM that he repeatedly contacted the creditor to discuss options to resolve this debt, but the creditor was non-responsive. He intended to continue to try to reach the creditor to resolve this debt. He did not provide documentation to corroborate his claimed efforts of resolving this debt. (Items 4, 5, 6; AE A)

SOR ¶ 1.o is for a \$1,427 retail credit card in collection. Applicant indicated during his background interview that his former spouse obtained this card for her personal use, and she was supposed to pay it after their divorce. He indicated that he initially disputed the debt with the creditor when the creditor contacted him about it, and then he later contacted the creditor to try to resolve it if his former spouse had not yet done so. He stated in his response to the FORM that he paid this debt. He contacted the creditor in September 2021 to “bring to [the creditor’s] attention the issue with clearing up an item on your credit report,” and the creditor requested that he provide additional information. He did not provide documentation to show that he responded to the creditor’s request for additional information or that he resolved this debt. (Items 4, 5, 6; AE A)

SOR ¶ 1.p is for a \$366 charged-off department store card. Applicant obtained this card for personal purchases. He indicated during his background interview that he contacted the creditor and resolved this debt through a payment plan. He stated in his response to the FORM that he paid this debt. In September 2021, the creditor offered him a settlement of \$113 to resolve this debt, and he paid \$113 in October 2021. (Items 4, 5, 6; AE A)

SOR ¶¶ 1.q and 1.r are for two accounts in collection with the same creditor, for \$1,373 and \$2,773, respectively. Applicant stated in his response to the FORM that he was awaiting a response from the creditor. He did not provide documentation to show that he was in the process of resolving, or that he resolved these debts. (Items 4, 5; AE A)

SOR ¶ 1.s is for a \$4,106 account in collection. Applicant indicated during his background interview that he was unaware of this debt. He intended to contact the creditor to determine whether this debt belonged to him, and to enter into a payment arrangement to resolve it. In his response to the FORM, he provided undated documentation reflecting that the creditor was awaiting receipt of his bank information to

set up a payment arrangement for this debt. He did not provide documentation to show that he responded to the creditor's request for his bank information or that he resolved this debt. (Items 4, 6; AE A)

SOR ¶ 1.u is for a \$527 cable service account in collection. Applicant indicated during his background interview that he paid this debt when he closed his previous home in 2016. He was unaware of this debt, as he had not received any correspondence from the creditor regarding this debt. He indicated that he contacted the creditor and disputed this debt. He did not provide documentation to corroborate his claim that he disputed this debt. (Items 3, 4, 6)

SOR ¶ 1.v is for a \$490 car insurance account in collection. Applicant indicated during his background interview that he left this company for another car insurer. He was unaware of a delinquent balance as he had not received any correspondence from the creditor regarding this debt. He intended to contact the creditor to resolve this debt. He did not provide documentation to corroborate his efforts to resolve this debt. (Items 4, 6)

SOR ¶ 1.x is for a \$1,757 charged-off personal loan. Applicant obtained this loan after his divorce and during his period of unemployment to assist with living expenses. He was unable to pay the loan and then forgot about it. He indicated during his background interview that he intended to contact the creditor to resolve this debt. He did not provide documentation to corroborate his efforts to resolve this debt. (Items 4, 6)

SOR ¶ 1.z is for a \$479 charged-off auto account. Applicant obtained an auto loan to purchase a car in 2010. His car was repossessed in 2018, when he could not afford to make the monthly payments. Applicant indicated during his background interview that his outstanding balance was satisfied when the car was auctioned, and he was unaware of a delinquent balance. As he had not received any correspondence from the creditor regarding this debt, he did not intend to contact the creditor. (Items 4, 5, 6)

Medical debts

Applicant stated that he was unaware he had any outstanding medical debts, and he was contacting the medical provider in an attempt to settle these debts. He stated in his response to the FORM that SOR ¶ 1.l had a zero balance. He provided documentation reflecting that as of September 2021, he had a zero balance for two medical accounts that he indicated were for SOR ¶¶ 1.l and 1.m, but no account numbers were reflected to corroborate his claim. He also indicated during his background interview that he contacted the creditor for SOR ¶ 1.w, a \$100 medical account in collection, and he settled this debt. He did not provide documentation to corroborate to show that he resolved his medical debts. (Items 4, 5, 6; AE A)

Applicant acknowledged that he had poor credit but stated that his financial status was improving. He indicated during his background interview that although he relied on his spouse's income to assist him with repaying his outstanding debts, he and

his spouse kept their finances separate, and they used a joint account for their monthly household expenses. He estimated that they had a net monthly remainder of approximately \$2,336 after expenses. He stated, in his response to the FORM, that he intended to continue resolving his debts. He requested an appointment with a financial counselor through his employee assistance program (EAP). (Item 4; AE A)

Policies

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 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, 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. According to AG ¶ 2(a), 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 access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and 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 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. Section 7 of Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “inability to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply. Applicant has a history of not paying his debts.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following 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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant paid SOR ¶¶ 1.b and 1.p, and I find for him on those two debts.

Applicant made one payment of \$100 under the payment plan he entered into in April 2022 for SOR ¶ 1.c. He did not provide documentation to corroborate his claims of payment for any of his remaining debts. He did not provide documentation to corroborate the basis for his dispute, or that he disputed, SOR ¶ 1.u. While he requested financial counseling through his EAP, he did not provide evidence that he received such counseling. I find that Applicant's financial difficulties continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d) and 20(e) are not applicable.

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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c - 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.r - 1.z:	Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge