



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



In the matter of:)
)
) ISCR Case No. 20-03433
)
Applicant for Security Clearance)

Appearances

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

12/05/2022

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 18, 2020, 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 10, 2022.

On September 9, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing scheduling the case for October 12, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4 into evidence. Applicant offered Exhibits (AE) A through J into evidence. All exhibits were admitted without objection. Applicant testified. I received the hearing transcript on October 27, 2022. The record remained open until October 28, 2022, to give Applicant time to submit additional documentary evidence. On October 25, 2022, Applicant requested an extension of said date to November 3, 2022. Department Counsel had no objection, and the closing of the record was extended to November 3, 2022.

Applicant timely submitted AE K through R. All exhibits are admitted into the evidence without objections.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the allegations in SOR ¶¶ 1.a through 1.k with explanations.

Applicant is 40 years old and has been married since 2009. He has three children, ages 13, 10, and 5 years old. He earned a bachelor's degree in 2006. He is also certified in a specific management technique. (Tr. 16)

Applicant started working for federal contractors in 2007. He worked for one until 2010, when he was laid off and then unemployed for ten months. From 2012 to 2018, he worked for another federal contractor before being laid off for a year. At the time of that layoff, he was earning \$89,000 annually. His employer gave him \$10,000 as unemployment assistance. He subsequently applied for unemployment benefits and received \$400 to \$500 monthly. He said the delinquent debts alleged in the SOR started to accumulate during his layoff. His wife was working during his unemployment period, although they were living separately. (Tr. 17-21, 23-27; GE 1)

In 2019, Applicant obtained a position with another federal contractor for whom he worked until 2020. He earned \$90,000 annually in that position. In 2020, he started his current position, and earns \$100,000 annually. His wife is the director of an engineering program at a private university. They resumed living together in 2021. (Tr. 16, 23-24, 27; GE 1)

Applicant obtained his first security clearance in 2015. (GE 1 at 34) In May 2020, he submitted his second security clearance application (SCA). In it, he disclosed an \$11,643 personal loan that became delinquent in 2019. He stated he was working on a payment plan. (GE 1 at 36) He disclosed a \$203 unpaid utility bill from 2019. He said he contacted the company to make a payment offer. He had a credit card that was in collection with a \$2,100 unpaid balance. He noted in his SCA that he was making \$25 monthly payments on it. (GE 1 at 36 through 38)

In July 2020, Applicant was interviewed by a government investigator about background issues and financial delinquencies. Applicant acknowledged that he relied on credit cards to pay expenses after he lost his job in 2018. He reported that he intended to establish repayment plans for 12 delinquent debts he discussed and said he would start paying them in August 2020. (GE 2)

Based on a credit bureau report (CBR) from June 2020, the SOR alleged 11 delinquent debts totaling \$26,779, which became delinquent between 2018 and 2021. These debts were discussed in the above interview. (GE 3, GE 4) The status of the debts are as follows:

1. The student loan alleged in SOR ¶ 1.a has a balance of \$4,515, and was past due \$266, according to Applicant's June 2020 CBR. Applicant said he has been making a monthly minimum payment of \$20 since October 2019. His evidence documents that he made a \$20 payment in March, April, and May 2021. He said the account is in good standing. His September 2022 CBR reports the loan as "pays account as agreed." (Tr. 29-30, 58-62; GE 3 at 10; AE G, AE H, AE I) At some point, the loan was transferred to another creditor. (Ex. M) The loan is currently in forbearance, as noted below:

In March 2020, as a result of the COVID-19 pandemic, the DoEd placed all federal student loans in forbearance and has since extended the student loan payment pause through December 31, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collection on defaulted loans. (See Federal Student Aid: <https://studentaid.gov/announcements-events/covid-19>.)

2. The student loan alleged in SOR ¶ 1.b has a balance for \$4,484, and was past due \$199, according to Applicant's June 2020 CBR. Applicant said this is a duplicate allegation of the loan above, and it bears the name of the new creditor for the above student loan. (Tr. 31-32; AE M) This student loan does not appear on Applicant's September 2022 CBR. It is a duplicate.

Applicant testified that he owes about \$100,000 in student loans. (Tr. 58) According to the September 2022 CBR, his student loans total \$104,434. That CBR reports the loans as "pays account as agreed" and notes his last payment was in August 2022. The \$4,515 student loan alleged in SOR ¶ 1.a, is reported as having a balance of \$4,745. It is not included in the \$104,434 balance. (GE 3 at 10.) He said he has made minimum payments on the loans since 2006 and they have not gone into collection. He initially borrowed about \$70,000. As a result of his low payments, the loans have accumulated a substantial amount of interest. He has not made larger payments because he is trying to reduce other debts. (Tr. 59-62)

3. The \$11,643 debt alleged in SOR ¶ 1.c is owed to a company for a \$14,000 personal loan Applicant took out in October 2017 to consolidate credit card bills and allow him to make only one monthly payment. He made payments until he was laid off eight months later. According to the September 2022 CBR, the debt became delinquent in 2019, and the last payment was in July 2021. Applicant said he set up an agreement with the debt collector to make monthly payments of \$120 in January 2021, and he has been making them since; however, there is no proof documenting payments since May 2021. The September 2022 CBR remains the most recent information on the debt, showing an outstanding balance due of \$11,133. (Tr. 33-39, 58; GE 3 at 8; AE I) This debt is not resolved.

4. The \$4,690 credit card debt alleged in SOR ¶ 1.d was charged off in 2019. It was settled and paid in February 2021. (Tr. 39; GE 3 at 10; Ex. R) It is resolved.

5. The \$2,711 collection account alleged in SOR ¶ 1.e, owed to a credit card company, was charged off in 2019. It was paid in November 2020. (GE 4 at 10; AE O) It is resolved.

6. The \$1,383 collection account alleged in SOR ¶ 1.f was owed to a credit card company and was charged off in 2020. It was paid in October 2022, post-hearing. (Tr. 45; GE 4 at 10; Ex. Q) It is resolved.

7. The \$675 utility debt alleged in SOR ¶ 1.g was charged off in 2019. It was paid in October 2022, post-hearing. (Tr. 47; GE 4 at 11; AE K) It is resolved.

8. The \$289 charged-off account alleged in SOR ¶ 1.h was charged off in 2019. It was paid in October 2022, post-hearing. (Tr. 49; AE N) It is resolved.

9. The \$233 collection account alleged in SOR ¶ 1.i, a utility bill, was charged off in 2019. It was paid in in April 2021. (Tr. 51; GE 4 at 11; AE H) It is resolved.

10. The \$204 medical debt alleged in SOR ¶ 1.j was placed in collection in 2018. It was paid in October 2022, post-hearing. (Ex. P) It is resolved.

11. The \$201 internet bill alleged in SOR ¶ 1.k was placed in collection in 2020. (Tr. 52-53) There is insufficient evidence to determine whether that this debt has been resolved.

Applicant submitted his budget. His net monthly income is \$6,700 and includes his wife's income. Their expenses total \$4,525. They have \$2,100 remaining in their budget at the end of the month. (AE A) He has not participated in financial counseling since college. (Tr. 54) He said he has paid all of the alleged debts, except the consolidated loan he obtained in 2019. (Tr. 40)

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 about \$26,779 of delinquent debt between 2018 and 2021 that he was unable to resolve. The above disqualifying conditions apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following four 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.

Applicant's financial delinquencies are not longstanding, but are more recent and attributable to the loss of his job in 2018 followed by unemployment for a year; a separation from his wife around the same time; and reliance on credit cards while he was unemployed. He has been working since 2019, and in 2021 he resumed living with his wife. Similar circumstance are unlikely to recur. The evidence establishes some mitigation under AG ¶ 20(a). While his unemployment and separation were circumstances beyond his control, his reliance on credit cards was within his control. He did not present evidence that he acted responsibly under his circumstances until November 2020, when he paid one alleged debt. AG ¶ 20(b) partially applies.

Applicant has not participated in credit or budget counseling since college. He paid and resolved seven debts: SOR ¶¶ 1.b for \$4,690 in February 2021; 1.e for \$2,711 in November 2020; 1.f for \$1,383 in October 2022; 1.g for \$675 in October 2022; 1.h for \$289 in October 2022; 1.i for \$233 in April 2021; and 1.j for \$204 in October 2022. These total \$10,185. He has not resolved the large \$11,643 debt alleged in SOR ¶ 1.c, or the \$201 debt alleged in SOR ¶ 1.k. These two debts total \$11,844. The student loan debt

alleged in SOR ¶ 1.a, which had a past due amount of \$266, is in good standing as of September 2022. There is some evidence indicating that Applicant's delinquent debts are slowly coming under control. The evidence establishes limited mitigation under AG ¶ 20(c).

Applicant established limited mitigation under AG ¶ 20(d) for six of the seven debts, as he did not initiate a good-faith effort to resolve them until after he received the SOR in December 2020 or after he participated in his October 12, 2022 hearing. He established full mitigation as to the debt he paid in November 2020, after meeting with the investigator in August 2020 and prior to the issuance of the SOR in December 2020.

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.

Applicant is 40 years old. He has been working for federal contractors since 2007, with two periods of unemployment, the last being from 2018 to 2019. During that year of unemployment, he accumulated delinquent debts that totaled \$26,779. During his interview in July 2020, he said he intended to work out payment plans for all of his debts. Despite having knowledge of the government's security concerns in July 2020, he did not take adequate steps to address his delinquent debts until after the SOR was issued and he had attended his October 2022 hearing. Half of the alleged debt amount remains unresolved, despite earning a large salary since 2019. During the hearing, he did not exhibit a comprehensive knowledge of his delinquent debts or finances. Although he has managed to keep his student loans out of default by making minimum payments since 2006, they continue to increase significantly due to the accrual of interest charges. At this time, he has not established a reliable track record of responsibly handling his financial obligations. Overall, the record evidence does not resolve my concerns about Applicant's eligibility and suitability for a security clearance. He did not sufficiently 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 and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d through 1.j:	For Applicant
Subparagraph 1.k:	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