



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



In the matter of:)
)
) ISCR Case No. 20-02710
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2023

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On April 6, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

On June 23, 2021, Applicant answered the SOR, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 15, 2022, and the hearing was convened as scheduled on August 30, 2022, using video teleconferencing capabilities. The Government offered

exhibits (GE) 1 through 9, which were admitted into evidence without objection. The Government's discovery letter to Applicant was marked as Hearing Exhibit (HE) I and its exhibit list was marked as a HE II. Applicant testified, and offered exhibits (AE) A-C at the hearing, which were admitted without objection. The record remained open after the hearing and Applicant timely submitted exhibits AE D-G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 12, 2022.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 49-year-old employee of a federal contractor performing the duties of an information technology network instructor. He began working at his present job in June 2017. He served in the U.S. Army from 1994-2017, retiring as a sergeant first class (E-7) with an honorable discharge. While serving in the Army he deployed four times, including to Iraq twice, Afghanistan, and Africa. He receives disability income from the Department of Veteran's Affairs. He has taken some college courses. He is married and has two children. (Tr. 7, 22-23; GE 1)

The SOR alleged that Applicant filed for Chapter 13 bankruptcy protection in 1998 and 2007. It also alleged 16 delinquent accounts (repossessed cars, consumer debt, payday loans, and a utility debt) totaling approximately \$31,368. (SOR ¶¶ 1.a – 1.r) The debts are established by credit reports from October 2017, April 2019, March 2020, September 2020, and August 2022; Applicant's personal subject interview (PSI) with an investigator in October 2018; and his SOR admissions. The bankruptcies are established by court database records. (GE 2-9; Answer to SOR)

Applicant's financial difficulties began after he joined the Army in 1994. He stated that he was not savvy with financial matters and got into debt right away. This led him to file his first Chapter 13 bankruptcy in 1998. He completed the payment plan approved by the court and his debts were discharged in 2006. He accrued more unpaid debt later in his military career. The payment of that debt was impacted by his deployments in places where he did not always have ready access to the internet or telephone service to contact his creditors about payment plans. He filed his second Chapter 13 bankruptcy in 2007, which was dismissed in 2012, when he stopped making his plan payments. He stopped because he began to realize the impact bankruptcy would have on his security clearance. When he returned from his last deployment, he discovered that his debts were more than 90 days past due. He recently employed a national law firm to attempt to have debts removed from his credit reports. (Tr. 25-27, 31-33; GE 7-8)

The status of the SOR debts is as follows:

SOR ¶ 1.c-\$1,901. This debt resulted from a delinquent payday loan. The loan became delinquent in July 2019. Applicant provided documentation showing that he paid in July 2021. This debt is resolved. (Tr. 34; GE 6; AE A)

SOR ¶ 1.d-\$9,356. This debt resulted from the deficiency balance owed after the repossession and sale of Applicant's car. The date of a major delinquency was July 2018. Applicant admitted this debt in his SOR answer and stated that he got behind on it when he was deployed in 2015-2016. He also stated that he planned to negotiate and pay this debt once his other debts were paid. During his hearing testimony, he admitted that he had not paid this debt, but had disputed it on his credit report and it was no longer showing on the report. He gave no reason for the basis of the dispute. There is no documented evidence showing the result of Applicant's dispute. This debt is unresolved. (Tr. 39, GE 6; AE G)

SOR ¶ 1.e-\$866. Applicant incurred this credit-card debt in 2012. A credit report listed the date of a "major delinquency" was March 2015. This is a charged-off account. Applicant stated in his SOR answer that he intended to pay this debt once his other accounts are paid. There was no evidence of payment submitted. This debt is unresolved. (GE 6, SOR answer)

SOR ¶ 1.f-\$510. Applicant incurred this credit-card debt in 2012. The date of a "major delinquency" was February 2015. This is a charged-off account. Applicant stated in his SOR answer that he intended to pay this debt once his other accounts are paid. There was no evidence of payment submitted. A recent credit report shows that Applicant has an account with this creditor with a status of "pay as agreed." This is a different account than the SOR-alleged debt that was opened in April 2019 with a different account number. The SOR debt is unresolved. (GE 6; AE G (p. 18-21); SOR answer)

SOR ¶ 1.g-\$1,120. Applicant admitted this consumer debt. He documented settling this debt in June 2021. This debt is resolved. (AE E; SOR answer)

SOR ¶ 1.h-\$606. Applicant admitted this credit-card debt. He documented settling this debt in July 2021. This debt is resolved. (SOR answer (attachments))

SOR ¶ 1.i-\$634. Applicant admitted this debt. He documented settling this debt in June 2021. This debt is resolved. (SOR answer (attachments))

SOR ¶ 1.j-\$4,157. Applicant admitted this consumer debt. The account was opened in September 2014. It was charged off in February 2015, in the amount of \$7,185. He received an IRS 1099-C for tax year 2021, cancelling the debt. This debt is resolved. (Tr. 40; AE D; SOR answer)

SOR ¶ 1.k-\$966. Applicant admitted this consumer debt. Applicant documented paying this debt in July 2022. This debt is resolved. (AE B; SOR answer)

SOR ¶ 1.l-\$1,003. Applicant incurred this credit-card debt in 2013. The date of a "major delinquency" was November 2019. This is a charged-off account. Applicant stated in his SOR answer that he intended to pay this debt once his other accounts are paid. There was no evidence of payment submitted. A recent credit report shows that Applicant has an account with this creditor with a status of "pays account as agreed." This is a

different account than the SOR-alleged debt that was opened in November 2019 with a different account number. The SOR debt is unresolved. (GE 6; GE 9; SOR answer)

SOR ¶ 1.m-\$485. Applicant admitted this consumer debt. He documented settling this debt in June 2021. This debt is resolved. (AE C; SOR answer)

SOR ¶ 1.n-\$1,588. Applicant admitted this consumer debt that was opened in 2013. The date of a “major delinquency” was November 2019. This is a charged-off account. Applicant stated in his SOR answer that he called the creditor to resolve the debt, but was told the debt was sent to the IRS. He testified at hearing that when he called the creditor, the person he spoke with was unhelpful and he decided to save this debt for last. There is no evidence of payments submitted. This debt is unresolved. (Tr. 40-41; GE 6; SOR answer)

SOR ¶ 1.o-\$466. Applicant admitted this debt. He documented settling this debt in June 2021. This debt is resolved. (SOR answer (See attachments to answer))

SOR ¶ 1.p-\$363. Applicant admitted this debt. He documented settling this debt in June 2021. This debt is resolved. (SOR answer (See attachments to answer))

SOR ¶ 1.q-\$5,484. This debt resulted from the deficiency balance owed after the repossession and sale of Applicant’s daughter’s car, for which he cosigned. When she failed to make the payments, the creditor turned to Applicant for payment. The date of the first delinquency was May 2018. Applicant admitted this debt in his SOR answer and stated he would be paying it off. In his hearing testimony, he stated that he was trying to get the debt removed from his credit report. This debt is unresolved. (Tr. 39; AEG (pp.72-74))

SOR ¶ 1.r-\$1,863. Applicant admitted this consumer debt. The account was opened in October 2012. The date of last action was August 2018. It was charged off. Applicant testified that he did not pay the debt, but it has fallen off his credit report. This debt is unresolved. (Tr. 40; GE 3-4; SOR answer)

All the above resolved delinquent debts were paid after the issuance of the SOR in April 2021. Applicant testified that his annual income is approximately \$64,000 and that his wife’s current income is approximately \$36,000 annually. In August 2022, he purchased a home for \$450,000. His monthly mortgage payment is \$2,500. He claimed that he typically has approximately \$1,500 to \$2,000 left over at the end of the month after paying all his bills. He has no retirement savings account. He admitted that he recently bought a 2015 Mercedes Benz automobile for \$38,000. His monthly payments are approximately \$750. He owes \$800 on his 2021 federal income taxes (this information will not be used for disqualification purposes, but it may be used in determining the applicability of any mitigating conditions and in assessing the whole-person factors). He hired a credit-relief law firm to help him send dispute letters for some of his debts, Other than that assistance, there is no other evidence of financial counseling. (Tr. 29-30, 42-45; AE F)

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 national security eligibility 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 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 for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

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

Applicant has a long history of financial difficulties dating back to a 1998 Chapter 13 bankruptcy where his debts were discharged, and a 2007 Chapter 13 bankruptcy that was dismissed for nonpayment in 2012. Additionally, he incurred 16 delinquent debts totaling, approximately \$31,000. Seven of the debts remain unpaid. Applicant's admissions and credit reports establish the debts, and court records establish the bankruptcies. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's debts are recent because they are ongoing and, although he paid eight of the debts, with one also being cancelled by the creditor and reported as income to the IRS, he failed to address the remaining debts, which comprise approximately two-thirds of the overall debt amount. Additionally, the debts were not paid until after the issuance of Applicant's SOR in April 2021. AG ¶ 20(a) is not applicable.

Applicant did not present evidence that the debts arose from circumstances beyond his control. He admitted using credit unwisely early in his Army career. Additionally, he did not act responsibly concerning the debts when he failed to resolve them in a timely fashion. He also failed to complete his second Chapter 13 payment plan. AG ¶ 20(b) is not applicable.

Applicant presented some evidence of financial counseling, which was the hiring of the law firm to clean up his credit. However, his track record to date does not support a good financial picture. He has had financial difficulties for almost 25 years, beginning when he filed his first bankruptcy. Based upon his past history, there is no reason to believe that he will right his financial ship in the future. While he did resolve nine debts, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.c, 1.g-1.k, 1.m, 1.o-1.p.

While Applicant sent out numerous dispute letters, none contained specific reasons justifying any disputes. Additionally, no results from those inquiries were offered into evidence. Applicant admitted all the debts. AG ¶ 20(e) does not apply.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, including his deployments, and his contractor service. However, I also considered that he has not adequately addressed his delinquent debt. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For 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.c,1.g-1.k, 1.m, 1.o-1.p:	For Applicant
Subparagraphs: 1.a-1.b, 1.d-1.f, 1.l, 1.n, 1.q-1.r:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge