



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



In the matter of:)	
)	
)	ISCR Case No. 19-03352
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Leon Schachter, Esq.

03/01/2023

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the financial security concerns created by his history of, and ongoing, delinquent indebtedness. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

History of Case

On April 8, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), which came into effect June 8, 2017.

Applicant submitted his written Answer to the SOR on April 15, 2021. He denied SOR ¶¶ 1.a, 1.b, 1.p, 1.s, and 1.t, and admitted the remaining SOR allegations, with explanations. He also requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on July 21, 2021. Applicant's employer deployed him to the Middle East in early August 2021. After coordination with Applicant's counsel, DOHA issued a Notice of Video Teleconference Hearing on April 22, 2022, setting the hearing for May 5, 2022.

The hearing was convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant objected to GE 2, which was not admitted, and to GE 7, which was admitted for a limited purpose. GE 1 and 3 through 6 were admitted without objection. (Tr. 19-26.) Applicant testified and offered Applicant Exhibits (AE) A through X into evidence. Department Counsel noted that AE N was a duplicate of the first page of AE O addressing SOR ¶ 1.q, not evidence concerning SOR ¶ 1.p. Applicant subsequently submitted AE Z to correct this clerical error. Department Counsel also objected to AE X, which was admitted for limited purposes as demonstrative evidence. All other exhibits were admitted without objection. (Tr. 27-36.) I granted Applicant's request to leave the record open until June 15, 2022, to permit submission of additional evidence. He timely submitted AE Y, Z, and AA, which were admitted without objection. DOHA received the hearing transcript (Tr.) on May 17, 2022.

Findings of Fact

Applicant is 51 years old. He came to the United States from his native country in April 1991, after graduating from high school and attending college for one year. He enlisted in the U.S. Navy in October 1995, and served four years on active duty, followed by four years in the Inactive Reserve. From October 1999 to October 2003, he worked as an architectural drafter for a laboratory design firm. During that time he also earned a two-year associate's degree in Architecture from a community college. He enlisted in the Army in October 2003, and served honorably until he retired from active duty as a geospatial engineer staff sergeant (E-6) on November 1, 2019. He and his first wife married in April 1997 and divorced in November 2015. They have three daughters, one of whom is 36 years old and graduated from college. He continues to pay child support for the other two daughters. He married his second wife in 2017, and they have a six-year-old daughter. (GE 1; AE C; AE D; Tr. 37-39, 76-77, 111-112.)

Applicant held security clearances during his time on active duty and is seeking a security clearance to enable his potential employment as a civilian geospatial analyst. On April 2, 2019, while he was still on active duty, the DoD CAF issued him a Letter of Intent to revoke his national security eligibility, including an SOR citing financial concerns under Guideline F and personal conduct concerns under Guideline E. That SOR alleged that his September 7, 2016 credit bureau report included 21 delinquent debts totaling over \$156,000; and that he failed to disclose them by answering, "No," to the question on his August 2016 security clearance application that asked whether he had any financial delinquencies. Applicant answered that LOI, but then applied to retire from the Army when he reached 20 years of service on November 1, 2019. He signed a document

acknowledging that he would not retain a security clearance after retiring from active duty. He currently performs unclassified work, involving some deployments to an overseas U.S. Army base. He is sponsored for this clearance application by a prospective employer. (GE 1; GE 3; GE 7; AE D; AE E; Tr. 4-5, 9, 24-26, 42.)

The 2021 SOR, which is the subject of this adjudication, alleges that Applicant had 20 delinquent debts, totaling \$170,650. Two of the debts involved the first and second mortgages on Applicant's former home; ten were student loan accounts placed for collection; and the others were consumer credit, medical, and car loan delinquencies. Their existence was documented in credit bureau reports from September 2016, September 2019, June 2021, and April 2022. (GE 3; GE 4; GE 5; GE 6.)

SOR ¶¶ 1.a and 1.b: Applicant and his first wife bought a home for \$217,000 in 2004 and took out a \$70,000 second mortgage in 2006. His September 2019 credit report showed that the first mortgage was delinquent in the amount of \$4,181 (2 monthly payments plus fees) with a then-outstanding balance of \$174,061; and that the lender had charged off the second mortgage with a delinquent balance due of \$52,197. This account was charged off in March 2016 after Applicant stopped making payments on that loan in July 2015. He was one to five months late on payments toward the first mortgage from October 2018 to April 2020, according to his June 2021 and April 2022 credit reports. Applicant sold the home in September 2020, and used the proceeds to pay off these delinquent loans. (Answer; GE 3; GE 4; GE 5; GE 6; AE I; AE J; Tr. 47-50, 79-83.)

SOR ¶¶ 1.c and 1.l: Applicant obtained two \$12,500 student loans, while on active duty in December 2008 and April 2009, to pay for computer animation classes he took from an online art institute. He testified that animation is a hobby he loves, and he wanted to obtain a degree and explore it as a post-Army career field. These were Federal Direct Student Loans, in which the U.S. Government is the lender, not a private financial institution. He testified that he chose not to repay these loans because he was unsatisfied with the quality of the instruction he received over the two years he took these classes. His September 2019 credit report stated that both loans were assigned to the U.S. Department of Education (ED) in a collection status, with a combined \$22,514 balance due, after each became delinquent in April 2013. His September 2022 credit report showed one combined ED Direct student loan outstanding balance of \$23,069 with no scheduled payments, apparently under the COVID-related suspended collection policy. Applicant said that he recently delayed paying these loans while he figured out whether they had been consolidated with his other private student loans, discussed below. His testimony evinced confusion concerning the status of his numerous outstanding student loans, which he admitted became delinquent due to his extended failure to pay them as required. (GE 4; GE 6; AE K; Tr. 50-56, 59-61, 64-66, 83-92, 112-114.)

SOR ¶¶ 1.d, 1.f to 1.j, 1.n, and 1.o: From July 2006 to January 2008, Applicant obtained eight Stafford student loans, originally totaling \$37,426. These were Federally guaranteed loans issued by banks or other financial institutions. The record evidence does not establish what educational program each of these loans was used to pay for. Applicant commented about taking unsatisfying online architectural classes during this

period, but his college-graduate daughter would have been approximately 19 to 22 years old during those years as well. In any event, he acknowledged that these loans were legitimately his obligations. Applicant's September 2019 credit report showed that all these loans had been placed for collection after becoming delinquent in April or May 2013, with a combined balance due of \$68,737. On his April 2022 credit report, the combined balance due to the current loan servicing company had increased to \$74,747. It showed the loans to be in a 'deferred' status until April 2023, also apparently under the Government's suspended collection policy for student loan debtors. Applicant submitted some evidence of sporadic payments under agreements to begin repaying these loans, but nothing showing consistent repayment compliance. (Answer; GE 4; GE 6; AE K; Tr. 55-56, 59-61, 77-78, 83-92, 112-114, 120-121.)

Student Loan Consolidation: Applicant's post-hearing submission of evidence included a May 20, 2022 letter from the student loan management/collection agency agreeing to consolidate all ten of his delinquent student loans into one loan, with payments scheduled to begin 60 days thereafter. The letter directed him to continue making required monthly payments on his existing loans until receiving written notification that they had been successfully consolidated. The outstanding balance on the new loan, after consolidation of the ten loans discussed above, is to be \$97,852.61, and he will owe 360 monthly payments of \$618.50. The total interest charges will be \$124,807.30, with total repayments of \$222,660 over the next 30 years. He also submitted a payment history from the collection agency showing that he made no payments toward these loans between August 1, 2012, and May 31, 2021. During 2021 he made four payments totaling \$2,050; and he made two additional \$550 payments after his hearing, in May and June 2022. His loan consolidation appears to have been executed on June 10, 2022. (AE Y.)

SOR ¶ 1.e: In July 2019, Applicant had a \$269 past-due balance on a car loan he opened in April 2016 to purchase a 2010 BMW for \$18,399. The loan was for five years with monthly payments of \$480, and he had paid it down to \$11,273 by July 2019. His June 2021 credit report shows that from August 2017 to July 2019 he was one- or two-months delinquent in paying this loan 18 times, and made current payments 6 times. He testified that his payments were late because the seller did not pay for some engine repairs he thought should have been covered under the contract, and he paid for the repairs instead of paying the loan. In July 2019 the loan was transferred to another creditor, and in April 2021 Applicant accepted a debt consolidation loan offer from a different finance company. He used some of those funds to pay off the former creditor on this loan, and his payments to the latest lender are current. (Answer; GE 4; GE 5; AE L; Tr. 55-56, 92-94.)

SOR ¶¶ 1.k and 1.m: Applicant obtained two credit cards from a credit union in 1999 and 2007, with limits of \$8,000 and \$7,000 respectively. He stopped making payments on both accounts in April 2015, and they were charged off and closed with outstanding balances of \$7,543 and \$7,138 as of August 2019. His June 2021 credit report stated that these accounts were being paid under a partial payment agreement, with each balance having been reduced by \$10, and last payments made in November 2020. Applicant testified that he had recently reached a verbal agreement with the credit

union to settle these accounts for \$1,500 and \$1,200 payable in May and June 2022, and provided a receipt documenting a \$200 cash advance on April 18, 2022, from an unidentified credit card account to make \$100 payments toward each of these debts. No corroborating evidence of this agreement, or of subsequent payments, was provided. (Answer; GE 4; GE 5; AE M; Tr. 61-64, 94-97, 109-110.)

SOR ¶ 1.p: A collection agency reported, in August 2019, that Applicant owed \$3,013 in past-due payments on a cell phone account that the agency had acquired in December 2018. Applicant's last payment on this debt had been made in February 2016. Applicant claimed in his Answer, without documentation, that he completed paying a settlement agreement with this creditor on September 30, 2020. He testified that he paid off the debt in October 2020, for \$602. He explained that he originally didn't pay the cell phone company because he thought that roaming charges from calls while he was deployed to the Middle East were excessive. His settlement of the alleged debt is supported by the absence of this account from his June 2021 and April 2022 credit reports. (Answer; GE 4; GE 5; GE 6; Tr. 66-68, 97-99.)

Applicant opened another cell phone account with the same company in October 2020. That account also became delinquent and was placed for collection. Applicant explained that he did not make contractual payments on this new account because he thought that he should have been provided a better new phone than the one he received from the company under the contract. He provided documentation from the collection agency stating that on May 25, 2022, per his authorization, a \$253 payment would be processed from his credit card or checking account toward the \$1,192 balance due on this delinquent cell phone account with the same service provider. (Answer; AE Z; Tr. 66-68, 97-99.)

SOR ¶ 1.q: Applicant opened this automobile loan in March 2018, to purchase a 2009 used car for his second wife. Applicant testified that the car kept breaking down, so he decided to "return" it rather than make the required monthly payments. The lender repossessed the car and charged off the \$2,579 balance due in January 2019. Applicant acknowledged his responsibility to pay this debt. His June 2021 credit report reflected no payments since 2018, but he submitted a June 6, 2021 account statement from the creditor stating that a \$129 post-dated payment was scheduled to be deposited on June 15, 2021, toward the new total due of \$2,908. His April 2022 credit report showed a reduced balance of \$1,579 outstanding, with a last payment made in September 2021. He testified that he had reached a new settlement agreement in April 2022, under which he would not be charged additional interest if he paid off the debt within six months, and he made a \$100 payment toward the debt on April 21, 2022. (Answer; GE4; GE 5; GE 6; AE O; Tr. 68-70, 100-101.)

SOR ¶ 1.r: Applicant opened this \$1,779 credit card account in 2002. He testified that he stopped making required payments after December 2012 due to "financial oversight," and the creditor charged off the account. On March 27, 2022, the creditor offered him three different payment options to settle the balance for less than the amount owed. On April 20, 2022, he chose and executed the option to make one payment of

\$432. This account was recently resolved, after more than nine years of delinquency, by paying 25% of the amount owed. (Answer; GE 4; AE P; Tr. 70-71, 101-103, 110-111.)

SOR ¶ 1.s: Applicant opened this credit card account in July 2008. He testified that he used it for online purchases from iTunes. He stopped paying the account in June 2016 because of what he described as a communication issue concerning billing, and the creditor charged off the \$363 balance due. He settled this debt for less than the full balance with one \$163 payment on October 5, 2020. (GE 4; GE 6; AE Q; Tr. 71-72.)

SOR ¶ 1.t: Applicant failed to pay a \$297 medical debt in February 2017, and it was placed for collection with a balance-due of \$337 in October 2017. Applicant claimed that, after initially disputing this debt, he paid it off. He provided a copy of an undated bank checking account statement that showed a pending \$273.44 point of sale debit to a medical debt collection agency. Applicant wrote on this copy that he had two medical collection accounts for \$94 and \$248 that he settled for this \$273.44 amount. The bill attached to this exhibit says that the service dates for these two debts were in January and March 2021, not in 2017. No evidence corroborates that the \$337 collection account was resolved by this payment, although it does not appear on either his 2021 or 2022 credit reports. (Answer; GE 4; AE R; Tr. 72.)

Applicant testified that he owed more than \$5,000 in unpaid Federal income taxes that apparently became delinquent due to under-withholding from wages he earned while working in the Middle East during 2019 and 2020. He was laid off and returned to the United States before qualifying to exclude his earnings from his taxable income. This unpaid balance remained after an unspecified amount from Applicant's refund from his 2021 tax return was applied toward the debt. He said that he was making monthly payments to the IRS, but that his last such payment had been two or three months before his hearing. No documentation concerning this tax debt was submitted. (Tr. 104-106.)

Applicant submitted a personal financial statement stating that, to the best of his knowledge, his and his spouse's gross monthly income was \$13,443; and their net income after taxes and a \$1,000 child support allotment was \$10,511. They had car loan and credit card payments of \$1,610 and other living expenses of \$5,586. This left a monthly remainder of \$4,924. He testified that he saved these remaining funds, which would total almost \$60,000 per year, "to pay off all my education loans and my taxes, save it for retirement too." He then estimated the current balance of his retirement account to be about \$2,500. They had \$9,500 in bank savings, investments, and personal assets. (AE W; Tr. 106-107.)

Applicant also submitted a one-page copy of a page from an Equifax credit report stating that, "as of June 13, 2022, . . . You currently have no Collections on your credit file." That document has no identifying information concerning whose credit file it pertains to. However, since no objection was made to its authenticity, although it was merely identified by Applicant's counsel as, "Current Equifax statement reflecting no collection accounts," I presume it to have been a good-faith submission of a page from Applicant's credit report. (AE AA.)

Between June 30 and July 3, 2021, Applicant completed 11 online FDIC financial management courses. He said that he had failed to pay many of his delinquent debts because he disputed them. These disputes were either justified by his disappointment with the quality of the items he purchased or by what he described as overcharges and hidden fees. He nevertheless acknowledged that he actually incurred the debts in question. (GE 7; AE U; Tr. 73-76, 103-104, 113-115.)

Applicant was promoted to staff sergeant in August 2011. His NCO Evaluation Reports from 2016 through 2018 stated that he “met standard.” His senior rater comments in those evaluations included: “...has potential, with detailed instruction and supervision the NCO can accomplish assigned tasks”; “Soldier has reached his maximum potential for service and will RCP [meaning Retention Control Point, his maximum service time in rank] next year”; and, “reached the limit of his potential for advancement and has an approved retirement date.” Applicant was awarded three Army Commendation Medals, including one in July 2019, a Joint Service Achievement Medal, and two Army Achievement Medals, in addition to five Army Good Conduct Medals, and other unit and service awards. (AE E; AE G.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 2(c), 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 any doubt concerning personnel being considered for national security eligibility 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 requires that the “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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 EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and

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

The revocation of Applicant’s former security clearance was pending in 2019, for financial concerns and related personal conduct issues, when he retired from active duty with the acknowledgement that he would not retain national security eligibility. The 2021 SOR, which is the subject of this adjudication, alleged that Applicant had 20 delinquent debts, totaling \$170,650 based on his September 16, 2019 credit report. He resolved his

delinquent mortgage accounts by selling his house, took out a loan to refinance a car repossession debt, and recently settled two long-delinquent; credit card debts for less than he owed. After his hearing, he agreed with the collection agency to consolidate his \$97,852.61 in delinquent student loan debt and make 360 monthly payments of \$618.50. Two other credit card accounts, a medical debt, another car loan, and a cell phone account remain delinquent. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

AG ¶ 20 includes four conditions that could mitigate the security concerns arising from Applicant's financial issues:

(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, or 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 history of financial delinquencies dates back to 2012, during his Army service and before his 2015 divorce, and continue to date. He claims that his current financial situation is fully solvent, with almost \$5,000 of monthly income in excess of his living expenses, but he has not resolved or made regular payments toward his substantial delinquent debts with those funds. He completed some online financial management courses, but failed to demonstrate either a comprehensive understanding of his financial situation or a good-faith track record of compliance with purported debt-resolution agreements. He did not establish clear indications that his financial problems are being resolved or are under control. His remaining delinquent student loan, consumer, and Federal income tax debts cast substantial doubt on his current reliability, trustworthiness, and judgment. Applicant failed to establish mitigation of security concerns raised by his historical and continuing financial irresponsibility.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has not demonstrated accountability for resolving the numerous voluntarily incurred debts he failed to repay as agreed. He served honorably in the Army and Navy, and has devoted most of his adult life to support of national security objectives. However, Applicant failed to provide persuasive evidence of sufficient income security to ensure solvency in the future. The potential for pressure, exploitation, or duress remains undiminished, as does the likelihood of continuing financial issues. Overall, the evidence creates doubt as to Applicant's eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1b:	For Applicant
Subparagraphs 1.c and 1d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1q:	Against Applicant
Subparagraphs 1.r and 1s:	For Applicant
Subparagraph 1.t:	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 eligibility for a security clearance. National security eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge