



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



In the matter of:)
)
) ISCR Case No. 21-01458
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On July 26, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on November 15, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 3, 2022.

The hearing was convened as scheduled on September 23, 2022. The Government withdrew the personal conduct allegation. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A, B, and C, which were admitted without objection. The record was held open until October 31, 2022, for Applicant to submit additional information. On October 19, 2022, he indicated that he had health issues and requested an extension. The deadline was extended to December 2, 2022. No additional

documents were submitted. I sent him emails on December 15, 2022, and January 24, 2023, indicating that I would still accept documents. I never received a response.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since May 2021. He served on active duty in the U.S. military from 2000 until he was honorably discharged in December 2014. He seeks to retain a security clearance, which he has held since about 2018. He has college credits, but he has not earned a degree. He married in 2002 and divorced in 2012. He married again in 2012 and divorced in 2016. He married for the third time in 2018. He is separated, pending a divorce. He has two children, ages 19 and 17, and three teenage stepchildren. (Tr. at 14, 17-21, 24, 28-29, 33; Applicant's response to SOR; GE 1)

The SOR alleges 18 delinquent debts totaling about \$48,000. The debts are listed on a November 2020 credit report, a June 2021 credit report, or both credit reports. The debts include a credit card (SOR ¶ 1.a - \$11,342), the deficiency owed on an auto loan after the vehicle was repossessed (1.b - \$12,737), child support arrearages (1.c - \$10,608), payday loans (1.e - \$3,371 and 1.i - \$1,514), eight medical debts totaling \$2,527 (SOR ¶¶ 1.k-1.r), and five miscellaneous debts totaling \$6,285 (SOR ¶¶ 1.d, 1.f, 1.g, 1.h, and 1.j)

Applicant made multiple deployments while he was in the military, and he was stationed in a foreign country from 2009 to 2012. His first wife apparently remained in the United States and was responsible for paying the bills. She did not pay all of the bills. He was denied a security clearance for a government agency in about 2014 "due to income vs debt." (Tr. at 19-21; GE 1)

Applicant worked for a defense contractor from January 2015 until he was laid off in March 2021. He was unemployed until he started his current job in late May 2021. His prior job required him to periodically work overseas. He worked in Afghanistan from February 2020 through January 2021. When he was not overseas, he spent a lot of time away from home for work. He asserted that most of the SOR debts accumulated when he was overseas or working in the United States away from home, and his wife was in charge of handling the finances. He gave her a power of attorney. He did not find out until he returned from Afghanistan that she did not pay all of their bills, his vehicle was repossessed, and she opened accounts without his knowledge. (Tr. at 14, 22-23, 41; Applicant's response to SOR; GE 1-4; AE C)

Applicant contracted with a debt-settlement company in about November 2021 to assist him in resolving his debts. He enrolled 13 debts, totaling \$45,890, in the company's debt-resolution program (DRP). The program began on December 2, 2021. The enrolled debts included the debts alleged in SOR ¶¶ 1.a (\$11,342), 1.b (\$12,737), 1.d (\$1,062), 1.e (\$3,371), 1.f (\$2,621), 1.g (\$1,221), 1.h (\$1,079), 1.n (\$688), and 1.r (\$643). The SOR debts not included in the DRP are 1.c (\$10,608), 1.i (\$1,514), 1.j (\$302), and six medical debts. The plan also included four debts that were not alleged in the SOR for \$1,032 for a pool service company; \$847 for a cable services provider;

\$7,432 to a bank; and \$1,963 to another bank. (Tr. at 38, 47; Applicant's response to SOR; AE A-C)

Applicant agreed to make \$282 payments every two weeks to an escrow account. The debt-settlement company agreed to negotiate settlements with his creditors and use the accumulated funds in the escrow account, minus their fees, to pay the settlements. The company estimated a payoff amount of \$27,045, with an estimated debt-free date of August 2025. As of the last statement in September 2022, Applicant had deposited \$5,027 into the DRP, and the balance in the escrow account was \$448. (Tr. at 47; Applicant's response to SOR; AE A-C)

The debt alleged in 1.h (\$1,079) has been settled for \$541 and paid. The debts alleged in SOR ¶¶ 1.a (\$11,342), 1.d (\$1,062), and 1.f (\$2,621) have been settled, and payments are being made to those creditors. The DRP statement shows a total of \$220 paid to those three creditors. Based upon the \$5,027 Applicant paid into the DRP, payments to creditors totaling \$761, and the balance of \$448, it appears the debt settlement company takes their settlement fees before paying the creditors. (AE A, B)

The \$11,342 delinquent credit card debt alleged in SOR ¶ 1.a was listed on a March 2018 credit report as current with a \$14,593 balance. It was listed on the February 2020 credit report as charged off with a \$14,392 balance. The June 2021 credit report listed that the debt was charged off for \$15,216, with the first delinquency in May 2018. A payment of \$150 was made in April 2021, and the balance was \$11,342. Applicant stated that he was paying this debt outside the DRP. The DRP reported the balance of the debt when it was settled was \$10,642. Applicant's statement that he was paying this debt is accepted because the balance went down on the credit reports. The debt has been settled through the DRP for \$6,831, which includes the settlement amount and the debt settlement company's fees. The documents do not include a breakdown of the settlement amount and the fees. It is unclear how much has been paid to the debt settlement company, but only \$50 has been paid to the creditor. (Tr. at 35-37; Applicant's response to SOR; GE 2-4; AE A-C)

Applicant bought a vehicle in about November 2017 and financed it with a loan of more than \$33,000, through 72 monthly payments of \$761. It was listed on the March 2018 credit report as current with a \$33,451 balance. It was listed on the February 2020 and June 2021 credit reports as charged off with a \$12,737 balance (SOR ¶ 1.b). The date of first delinquency was December 2019, and the date of last payment was July 2020. The debt is in the DRP. (Tr. at 37-38; Applicant's response to SOR; GE 2-4; AE A, B)

The June 2021 credit report listed a child support debt to a state that was \$10,608 past due (SOR ¶ 1.c) with a balance of \$11,767. The date of first delinquency was May 2020, and the date of last payment was June 2021. Applicant stated that his employer stopped the court-ordered deduction from his pay while he was in Afghanistan. He stated that he realized in June 2020 that the deduction stopped, and he started sending money to the Department of Child Support Services and his ex-wife. He stated that deductions for his child support have been taken out of his pay consistently

since June 2021, and that the arrearages have been paid. He did not submit any documentation supporting his assertions. (Tr. at 25-27, 30-32; Applicant's response to SOR; GE 4)

The \$1,062 debt alleged in SOR ¶ 1.d was listed on the March 2018 credit report as \$239 past due with a balance of \$1,107, and the last activity in December 2017. It is reported on the two later credit reports with a balance of \$1,062. The date a major delinquency was first reported was August 2018. Applicant stated that the account was up to date and deactivated before he left for Afghanistan. His wife activated the account, made purchases, and then did not pay the account. He acknowledged at the hearing that he could have been mistaken about when the debt became delinquent. The debt has been settled through the DRP for \$724, which includes fees. Payments are being made to the creditor, with \$120 paid as of September 2022. (Tr. at 38-39; Applicant's response to SOR; GE 2-4; AE A, B)

Applicant asserted that his wife used the power of attorney to take out the payday loans (1.e - \$3,371 and 1.i - \$1,514). However, credit reports indicate the \$3,371 debt was opened in August 2018 and the \$1,514 debt was opened in November 2019. At the hearing he clarified that he gave his wife a power of attorney in 2018, and his wife opened the accounts without his knowledge while he was working on assignment away from home. He testified that both debts are in the DRP. The \$3,371 debt is in the DRP, but the \$1,514 debt is not. He stated that the company does not list the debt until it begins negotiations with the creditor. That statement does not appear to be accurate. (Tr. at 39-43; Applicant's response to SOR; GE 2-4; AE A, B)

The March 2018 credit report listed the \$2,621 debt alleged in SOR ¶ 1.f as becoming delinquent in June 2017. It is listed with the same balance on the two more recent credit reports. Applicant stated that he was assigned responsibility for this debt in his 2016 divorce. He enrolled the debt in a debt consolidation program (apparently a different program than the current DRP), but his wife removed the debt from the program while he was in Afghanistan. The debt has been settled through the DRP for \$1,656, which includes fees. As of September 2022, \$50 has been paid to the creditor. (Tr. at 42-43; Applicant's response to SOR; GE 2-4; AE A, B)

Applicant asserted that his wife used the power of attorney to open a utility account in his name, and then did not pay the debt (SOR ¶ 1.g - \$1,221). Credit reports indicate that the account was opened during the period he was in Afghanistan. The debt is in the DRP. (Tr. at 44-45; Applicant's response to SOR; GE 2-4; AE A, B)

Applicant stated that he was assigned responsibility for the \$1,079 (SOR ¶ 1.h) debt in his 2016 divorce. He enrolled the debt in a debt consolidation program, but his wife removed the debt from the program while he was in Afghanistan. The debt has been settled for \$789, including fees, and paid. About \$248 was paid to the debt settlement company for their fees, and \$541 was paid to the creditor. (Applicant's response to SOR; GE 2-4; AE A, B)

The June 2021 credit report listed SOR ¶ 1.j debt as \$302 past due, with a \$343 balance. Applicant asserted, without supporting documentation, that the debt is in good standing. The debt is not in the DRP. (Applicant's response to SOR; GE 4)

Applicant stated that the six medical debts were accrued by his wife for medical services for herself, his children, or his stepchildren. The credit reports and SOR do not name a creditor, they are only identified as "medical" or "medical health care." He stated that he paid three of the debts. Medical debts of \$688 and \$643 are in the DRP. (Tr. at 45-46; Applicant's response to SOR; GE 3, 4; AE A, B)

Applicant stated that he learned valuable lessons from his financial dealings with his wives. He and his wife separated after he returned from Afghanistan, and he cancelled the power of attorney. He is managing his finances, and he maintains a budget and spreadsheets to keep himself on track. He has an accountant to assist him. He earns about \$105,000 annually, and he receives disability pay of about \$1,200 a month from the Department of Veterans Affairs (VA). He stated that he intends to continue with the DRP until his debts are paid. He anticipates finishing the DRP early and buying a home. (Tr. at 15, 22, 27-29, 48-52; Applicant's response to SOR)

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 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 "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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.” 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

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

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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 attributed his financial problems to his estranged wife's actions, and to a lesser extent, his 2016 divorce. He apparently had similar issues with his first wife while he was stationed overseas. He stated that his child support arrearages resulted when his employer stopped the deductions from his pay.

Applicant contracted with a debt-settlement company in about November 2021 to assist him in resolving his debts. He enrolled 13 debts, totaling \$45,890, in the DRP, including nine SOR debts and four debts that were not alleged in the SOR. He agreed to make \$282 payments every two weeks. As of September 2022, he had deposited \$5,027 into the DRP, and the balance in the DRP was \$448, which means that \$4,579 was paid to the debt-settlement company and his creditors, with most of it going to the debt-settlement company.

The debt alleged in 1.h (\$1,079) has been settled for \$541 and paid. That debt is mitigated. The debts alleged in SOR ¶¶ 1.a (\$11,342), 1.d (\$1,062), and 1.f (\$2,621) have been settled, and payments are being made to those creditors. The DRP statement shows a total of \$220 paid to those three creditors. The DRP may eventually work out for Applicant, but there is still a long way to go. He stated that his child support arrearages have been paid, but he provided no documentation. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation

about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

Applicant indicated that he planned to continue with the DRP and pay all of the debts. Intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). The medical debts have minimal security significance, and they are mitigated. However, two non-medical SOR debts are not included in the DRP, and there are four debts totaling \$11,274 in the DRP that were not alleged in the SOR.

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.” There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions, individually or collectively, are insufficient to eliminate concerns about Applicant’s finances.

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. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant’s honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. I conclude 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-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Subparagraphs 1.k-1.r:	For Applicant
Paragraph 2, Guideline E:	Withdrawn
Subparagraph 2.a:	Withdrawn

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge