



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



In the matter of:)
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XXXXXXXXXXXXXXXXXX) ISCR Case No. 21-02246
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*
03/03/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on October 30, 2020. On September 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on October 8, 2021 and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 21, 2022. The case was assigned to me on October 5, 2022. On January 6, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted via video conference on January 30, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, presented testimony of one witness, and submitted seven exhibits marked Applicant's Exhibits (AE) A through G. AE A through AE G were admitted without objection. DOHA received the transcript (Tr.) on February 7, 2023.

Findings of Fact

Under Guideline F, the September 30, 2021 SOR alleged four delinquent debts totaling \$65,514. (SOR ¶¶ 1.a-1.d.) Applicant admitted those allegations with explanations. (AA.) In his Answer, he stated, in part: "Items A, B, C and D [of the SOR] are all being actively paid and my credit-repair specialist and I are working with debtors to pay this debt." (AA.) At the hearing, it was established that he had made no payments to the three creditors with the largest balances since the summer of 2019. And there were and are no payment plans in place for any one of the four SOR creditors. Those debts are still delinquent. (Tr. 30-43.)

Applicant is 40 years old, married since January 2005, and has two daughters ages 18 and 14. He is a college graduate (December 2010). He served on active duty in the U.S. Marine Corps from June 2008 until March 2011, when he was honorably discharged for medical reasons. (GE 1.) He was unemployed from March 2020 until October 2020, when he began working full time for his current employer, a defense contractor. (Tr. 22.)

Before his current employer, Applicant worked for his prior employer, (AN), from May 2010 until they parted ways by mutual agreement with severance in March 2020. (Tr. 27-28; GE 1.) He started at AN as a help desk technician and by the time he left, he had been promoted to the chief digital officer over his 10 years. (Tr. 23.) He and the new CEO disagreed over the role digital technology should play in their business. In addition, COVID hit the business, shutting down many other companies, and wrecking the supply chain. The CEO offered him a reduced role at a much reduced salary, but then that opportunity was gone too. (Tr. 23-25.)

Applicant and his CEO, which was the third CEO in two years, discussed a new role for Applicant for weeks. It became apparent to him that going forward would not work. The message he got was "here's the door," and he was "shown the door." Leaving after 10 years was emotionally and professionally difficult. He had no steady income. He did leave with a severance package that was a lump sum of five months'-salary; his annual salary at that time was \$200,000. (Tr. 25-28.)

Applicant's salary before leaving was augmented annually with a 40% bonus. It was his practice to use salary and some bonus money to pay bills and then put the rest in savings. Now no bonus would be paid. His daughters in private school, other family

expenses, and his wife then in school reduced his income. He had two boat payments, car payments, and his house payment. He said that with the job he just lost on short notice he had “lived differently” than when he was “an E-5 in the Marine Corps.” He realizes that “financial problems present security concerns for the government” (Tr. 28-30.)

SOR ¶ 1.a. Applicant testified about SOR ¶ 1.a, a charged-off credit card for \$10,774. He recalled that the credit limit was \$10,000 but could not recall when he made the last payment. Being referred to GE 5, he testified that the last payment was made in August 2019. He could not recall why he stopped payment after that, but he called the creditor ahead of time to advise that he was going to stop payments. On his October 30, 2020 SCA (GE 1), he listed this SOR debt and said that he couldn’t pay as a result of being unemployed since April 2019. But in August 2019, he was still employed by AN and was so employed until March 2020. In his SCA, he said the debt would be paid in full within one month. Applicant reiterated that he has not made any payments on this account, since August 2019, and he agreed it remains charged off. (Tr. 30-34.)

SOR ¶ 1.b. Applicant testified about SOR ¶ 1.b, a charged-off credit card for \$18,914. He agreed this account was delinquent at the date of the SOR and is delinquent today. He recalled that he opened this account sometime in 2018. He recalled that the credit limit was \$16,000 or \$17,000. He could not recall when he made the last payment. Being referred to GE 5, he testified that the last payment was made in June 2019. (Tr. 35-36.)

Referring to GE 5 and the SOR ¶ 1.b account, Applicant agreed that between the October 2018 opening date and the June 2019 last payment (nine months), he incurred \$18,914 of charges. He could not recall if those charges were what caused him to stop making payments on that account. He remembered “vaguely” that “we had a very, very expensive summer that year . . . every intent was to pay these things off and the strategy just didn’t work this time.” (Tr. 36-37.)

Referring to his SCA (GE 1), Applicant testified that he intended to list the SOR ¶ 1.b account. In that SCA, he stated that he could not pay that debt, because he had been unemployed since April 2019. But he agreed that when he stopped paying this account, he was still employed by AN. He also agreed that in his SCA, he stated that he had set up a payment plan to start December 1, 2020. But in his January 25, 2021 Personal Subject Interview (PSI) (GE 2), he was “still in the process of talking to [the creditor] to make payment arrangements.” In fact, no “payment arrangements or payment plans . . . were ever entered into to resolve this debt.” And no payments have been made since June 2019. The account remains charged off. (Tr. 37-39.)

SOR ¶ 1.c. Applicant testified about SOR ¶ 1.c, a charged off credit card for \$33,972. He agreed that this charge-off existed and was delinquent at the date of the SOR. It remains delinquent today. He recalled that the credit limit was about \$30,000 and that GE 5 showed the limit to be \$29,300. GE 5 showed the last payment in June 2019. He agreed that GE 5 showed that between the date opened (June 2018) and the last

payment (June 2019), he charged \$33,972 on this card alone, which was \$4,000 over the credit limit. (Tr. 39-40.)

Applicant testified that the bulk of this credit card was used for a vacation with several other families. The trip was for his whole family and lasted about 10 days. In his SCA (GE 1), he listed this trip as being between 11 to 20 days. He testified that this trip cost between \$20,000 and \$25,000, and he returned from this trip in May 2019. A month after he returned from this trip (June 2019), he stopped making payments on the credit card accounts identified in SOR ¶¶ 1.b and 1.c totaling \$52,886. In his SCA, he stated that he could not pay SOR ¶ 1.c, because he had been unemployed since April 2019. But in June 2019, he was employed by AN. No payment plan or payment arrangements were ever put in place to resolve this debt. The account remains charged off. (Tr. 40-43.)

Applicant was questioned about his obligations for the three credit card accounts discussed above. He agreed with the following:

For each of the three credit card accounts, he had written agreements with the creditors.

Those agreements had a promise on his part to pay for all his charges to those accounts.

He agreed to pay at least a minimum amount each month by the due date.

When he made purchases in person, he signed a credit card slip agreeing to abide by the repayment terms of the cardholder agreement.

When he signed those slips, he indicated his continued agreement to pay for the products or services he was receiving at the time.

Over the years when these accounts were active, he received goods and services worth thousands of dollars that he never paid for.

Even though these charges have been charged off, he remains legally obligated to pay those debts. (Tr. 43-44.)

SOR ¶ 1.d. Applicant testified about SOR ¶ 1.d, an account in collection for \$1,854. He admitted this debt in his response to the SOR. He admitted that he is indebted to this creditor today and that the account remains delinquent. This debt was for the purchase of a guitar. In his PSI (GE 2), he said he would be making arrangements to resolve this debt, but no such arrangements were ever made. (Tr. 44-46.)

Applicant testified about his current personal finances. He has no concern that his annual salary will deviate in any way. Other than his current annual salary (\$200,000), he has two other sources of income, a 75% VA disability payment and his wife's salary as a social worker, \$38,000 per year. His current checking account balance is \$7,800 and the

balance between his investment and savings account is about \$24,000. He owns two cars. One is a 2017 model his oldest daughter drives and that he paid for in cash. The other is a 2022 model purchased new. The new car cost \$52,000, and the monthly payment is \$871.85. (Tr. 23, 46-48.)

Applicant recently purchased a home for \$760,000. His monthly mortgage payment is \$4,955. He does not support anyone else. After his monthly expenses, he has \$7,062 left. That money is split between savings and college tuition. He only has one active credit card. He does not owe any state or federal taxes, and he has never failed to file his state or federal tax returns. Other than his home purchase, he has not made any large purchases. On advice of his financial advisor, he sold both boats. He has not had any difficulty staying current on his debts in the past year. Since receiving the SOR, he used a credit consultant (or credit repair specialist). (Tr. 48-51.)

Applicant introduced an exhibit identifying five accounts not alleged in the SOR. (AG.) The record shows Applicant to be current (PAY AS AGREED) and no delinquent amounts past due on those accounts. (GE 3-5.)

Character Witness. Applicant called a retired U.S. Navy Rear Admiral as a character witness. He is the President and Chairman of the Board of Applicant's current employer. He served for 36 years on reserve and active duty. In his past five or six years of active duty, he held court martial power and was familiar with legal processes. He was responsible for about 600 naval service members and was very involved with security clearances. In that position, he suspended many security clearances for a variety of reasons. (Tr. 15-16.)

The witness has been in his current civilian position for about two and a half years. Applicant was one of the very first hires he made. When the witness came to this company, it needed someone really adept at business processes and how to do that from a digital basis. So, he hired Applicant as Director of IT. He did everything the witness asked him to do; he helped create the business planning processes and get IT systems in place. He did such a "phenomenally good job" that of the 10 leadership team members, Applicant was the only one the witness has promoted. The witness has turned over half of the work force to him. His leadership in operations includes the repair side, field service, and maintaining IT. (Tr. 16-17.)

The witness testified that Applicant has been "honest to a fault" "whenever [the witness] had any questions about how this [clearance] process is going [and they] have had conversations about it." The witness has "not seen the records," but Applicant reported that "he is making an honest effort to fix an unfortunate situation." "A lot of us had difficulty getting through COVID." The witness strongly recommends considering granting Applicant a clearance. (Tr. 17-18.)

The witness was asked whether at any time he felt uncomfortable handing Applicant the reins of about a \$60 million operations budget. The witness answered that he has "absolutely never worried about it at all." Applicant has built a "great relationship"

with the finance director, and Applicant “works very, very hard because . . . IT systems can be very expensive.” Applicant has the witness’s “full faith and trust.” (Tr. 19.)

The witness was asked whether failure to satisfy debts and meet financial obligations indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. The witness answered “yes” but explained. He would consider the character of the individual and whether they were honest about the particular situation and were sticking to a plan. He would use the whole-person concept. He thinks Applicant has made “sufficient progress.” He also considered this to be “a one-time deal” with no “history of behavior like this” by Applicant. (Tr. 20-21.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F: Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise any questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means . . . or irresponsible spending.

Applicant's SOR debts are established by his admissions and the Government's credit reports. He has been employed full-time by his current employer, since October 2020. He currently makes \$200,000 per year. AG ¶¶ 19(a), (b), (c), and (e) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant made his last payments on three of the four SOR accounts in the summer of 2019. The last activity on the fourth account was in 2020. That was not that long ago. More importantly, those four accounts remain currently delinquent. Their status, therefore, reflects poorly on Applicant's current reliability. AG ¶ 20(a) does not apply.

AG ¶ 20(b) has two requirements. First, the conditions causing financial problems must have been “largely beyond” an applicant’s control. Second, the applicant must have “acted responsibly” under the adverse circumstances he confronted.

For the three largest SOR debts, Applicant testified that his reason for not paying those debts was because he had been unemployed since April 2019. In fact, he agreed that in April 2019, he was *still fully* employed by AN (at \$200,000 a year before bonuses), until he left that company in March 2020. Leaving AN in March 2020, even on short notice, could not possibly have caused him to be unable to make payments to those three SOR creditors in 2019. In short, leaving AN in March 2020 was largely beyond his control, but it did *not result* in Applicant being unable to pay creditors a year earlier, in 2019.

Between 2018 and 2019, he ran up over \$50,000 in debt on just two credit cards, \$25,000 of which was for a family vacation. And on one card, he exceeded the \$29,300 credit limit by \$4,000. It is more likely that his excessive spending on credit caused his inability to pay. In fact, those same accounts remain delinquent today, four years after that vacation. Because the first requirement of AG ¶ 20(b) is not met, there is no need to address the second requirement. AG ¶ 20(b) does not apply.

There were and are no payment plans in place to repay the SOR creditors. Therefore, AG ¶ 20(d) does not apply.

Whole-Person Concept

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. In applying the whole-person concept, an 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.

As part of my application of our facts to the whole-person concept, I have considered two facts that are not alleged in the SOR. Unalleged conduct cannot be an independent basis for a denial. It can, however, be used to evaluate credibility and in the whole-person concept. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Those two facts will be considered only for those limited purposes.

First, Applicant introduced evidence of five accounts not alleged in the SOR. The record shows Applicant to be current (PAY AS AGREED) with no delinquent amounts past due on those accounts. I have considered this evidence in his favor showing sound financial judgment.

Second, in Applicant’s October 8, 2021 Answer he stated, in part: “Items A, B, C and D [of the SOR] are all being actively paid and my credit repair specialist and I are working with debtors to pay this debt.” The record established, however, that on the date of the Answer, there were no payment plans in place. The record also established that

