



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



In the matter of:)
)
) ISCR Case No. 22-02183
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2023

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant has multiple debts that remain delinquent and unresolved. His recent effort to initiate payment plans on some of the debts is insufficient to establish a track record of financial responsibility and are not enough to mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 22, 2021. On December 1, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on January 10, 2023, and provided exhibits (AX), that I have marked as AX A through E. He elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On January 26, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on January 26, 2023. He responded on February 24, 2023 (FORM Response) and provided exhibits that I have marked as AX F through I. Department Counsel did not object to the admission of any of Applicant's exhibits.

The case was assigned to me on March 14, 2023. The SOR and the Answer (Items 1, 2) are the pleadings in the case. Items 3-7 and AX A-I are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a-1.j with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact:

Applicant is 50 years old. He has been married twice. He and his second wife have been married since 1999. He has four adult children and one child, age eight. He served in the Army from 1992-1996 and again from 1998-2001. In both instances, he received an honorable discharge. He joined the National Guard in 2009 and continues to serve as an Army Reservist. He obtained his bachelor's degree in 2010. Applicant has been with his sponsoring employer since 2018 and works as an acquisitions specialist. (Items 3-4)

The SOR allegations concern ten delinquent debts, totaling about \$30,000. The debts are established by Applicant's credit reports from August 2021 and August 2022 as well as his admissions. (Items 2, 5-6)

Applicant's current financial issues began in 2017 when he stopped paying on his vehicle loan (SOR ¶ 1.a), discussed below. He then experienced financial difficulties with the start of the COVID-19 pandemic in early 2020. His wife, a registered nurse, left her employment because of COVID-19 related work restrictions. She then cared for their one young child at home when the school transitioned to virtual learning. Applicant described their financial situation when he was the sole income earner as "tight." She did not return to work until December 2022. (Items 2-4)

SOR ¶ 1.a (\$23,682) is a charged-off vehicle loan. Applicant purchased the vehicle in 2013. In 2017, he received notification that a state attorney general filed a lawsuit against the creditor for unfair loan practices. Applicant was informed that he might have qualified for compensation under a proposed settlement of that case. Based on this information, he stopped paying on the loan. In the years that followed, he never contacted the creditor, and he claimed the creditor never contacted him. He never took

steps to confirm the applicability of the lawsuit to his loan or verify whether he was entitled to any compensation from the settlement. (Item 2; FORM Response; AX I)

During his background interview in August 2021, Applicant claimed that the loan had been paid in full and that he may have been a victim of the creditor's "false credit reporting." In January 2023, after receiving the SOR, Applicant contacted the creditor. He learned that he was not included in the 2017 settlement of the state attorney general's lawsuit, and that the account had been charged off. Based on this information, Applicant made one \$300 payment toward the account. He also said he considered withdrawing funds from his retirement to pay the balance. (Items 2, 4; AX A)

However, in his FORM Response, Applicant claimed that the loan had been charged off and he had title to the vehicle free of any liens. He stated that he was disputing the account with the credit bureau and would not be sending any additional payments to the creditor. The debt is reflected as charged off in both credit reports in the record. (FORM Response; AX G; Items 5-6) The account is not resolved.

SOR ¶¶ 1.b (\$1,425) and 1.c (\$1,141) are charged-off credit cards. The accounts were opened in 2019 and became delinquent in late 2021. In January 2023, Applicant enrolled in payment plans for both accounts. He later claimed that the accounts were on auto-draft and would be paid off in one year. He did not provide any proof of payment. (Items 2, 5; FORM Response; AX B-C) The accounts are not resolved.

SOR ¶ 1.d (\$539) is a charged-off credit card. The account was opened in 2019 and became delinquent in 2021. In his FORM Response, Applicant claimed that he successfully disputed the account and it was removed from his credit report. Applicant did not describe the basis for the dispute and he did not provide any supporting evidence. The debt is reflected in both credit reports in the record. (Items 2, 5-6; FORM Response) The account is not resolved.

SOR ¶ 1.e (\$264) is a charged-off credit card. The account was opened in 2015 and became delinquent in 2016. In his FORM Response, Applicant provided evidence that the account was paid in full in 2019. (Items 2, 5-6; FORM Response; AX H) The account is resolved.

SOR ¶ 1.f (\$102) is a medical debt that was placed for collection by an unidentified medical creditor. Applicant made multiple attempts to find and pay the correct creditor to resolve this account. (Items 2, 5-6; FORM Response)

SOR ¶ 1.g (\$1,628) is a past-due credit card account. In his FORM Response, Applicant stated he recently set up a payment plan with the creditor and was scheduled to make his first payment in February 2023. He provided a document confirming a payment plan for a separate, past-due account with the same creditor that was not alleged in the SOR. (Item 5; FORM Response; AX F) The account is not resolved.

SOR ¶¶ 1.h (\$956) and 1.j (\$802) are a past-due credit card accounts. In January 2023, Applicant enrolled in payment plans for these debts and claimed the accounts were on auto-draft and would be paid off in one year. He did not provide any proof of payment. (Items 2, 5; FORM Response; AX D-E) The accounts are not resolved.

SOR ¶ 1.i (\$814) is a past-due credit card account. In his FORM Response, Applicant claimed that he paid the account in full in February 2023. He did not provide any supporting evidence. (Items 2, 5; FORM Response) The account is not resolved.

With regard to his current circumstances, Applicant stated that his wife's return to work "greatly improved" their finances, but did not further elaborate. He did not submit a budget and his total income and expenditures are unknown. (Item 2; FORM Response)

Applicant previously held a security clearance while in military service. In 2010, he received a SOR due to financial issues. It alleged he had about \$17,000 in delinquent debts. In 2013, following credit counseling and his submission of favorable financial information, he was granted a security clearance conditioned on financial monitoring by his Command. (Item 7) This is not alleged in the SOR and will not be considered by me for disqualification purposes, but I may consider it as it may relate to any mitigating conditions and in my whole-person assessment.

Policies

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

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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.

Analysis

Guideline F, Financial Considerations

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

The adjudicative 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.

The debts in the SOR, including a charged-off delinquent vehicle loan and multiple delinquent credit cards, are established by Applicant's admissions and the credit reports in the record. The above disqualifying conditions apply.

There are four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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;
- (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 financial issues began in 2017 when he stopped paying on his vehicle loan while hoping it would be forgiven as part of a legal settlement. However, rather than follow up with the creditor or the court, Applicant took no further action, and the debt remains unresolved. Then, with the onset of the COVID-19 pandemic and his wife's departure from her employment, Applicant's financial situation worsened. Still, even after discussing his delinquent debts during his background interview, Applicant took no action to resolve them until after he received the SOR. Although he recently agreed to start payment plans on some of the accounts, he did not produce evidence of payments.

An applicant who waits until his clearance is in jeopardy before resolving debts might be lacking in the judgment expected of those with access to classified information. ISCR Case No. 15-03208 at 3 (App. Bd. Mar. 7, 2017). Promises to pay or otherwise

resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). A meaningful track record of debt reduction includes establishing a plan to resolve financial problems and taking significant action to implement that plan. ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008).

Applicant initially experienced financial difficulties in 2010 that were eventually resolved in 2013, resulting in a conditional clearance. He is again experiencing financial difficulties that are recent and ongoing. His vehicle loan and several additional accounts remain unresolved. He recently initiated payment plans on several delinquent accounts, but provided an insufficient track record of payments to conclude that the accounts are being resolved responsibly. Applicant's financial circumstances continue to cast doubt on his current reliability, judgment and trustworthiness. AG ¶ 20(a) does not apply.

Applicant stated his delinquent debts in the SOR began with the COVID-19 pandemic and his wife leaving her employment. To at least some extent, this was a circumstance beyond his control, so AG ¶ 20(b) has some application. However, Applicant stopped paying on his largest delinquent debt, the vehicle loan, in 2017. His decision to not seek clarification of that account over the years was entirely within his control. That delinquency also predates the pandemic by several years. He also discussed multiple delinquent accounts during his background interview in August 2021. However, he chose not to take any action to resolve those accounts until January 2023, after he received the SOR. His recent promises to pay do not establish responsible action under the circumstances. AG ¶ 20(b) does not fully apply.

Applicant paid one account prior to the issuance of the SOR. He also made a single payment on his vehicle loan before deciding to dispute the account. He recently entered into payment plans on several of his other delinquent accounts, but provided little evidence of payments under those various plans. He has not shown enough of a track record of steady payments towards his debts to establish good faith. AG ¶ 20(d) does not fully apply.

Applicant admitted SOR ¶ 1.a in his Answer, but later asserted that he is no longer responsible for the debt. Thus, notwithstanding his admission, discussion of AG ¶ 20(e) is warranted. Applicant stopped paying on his vehicle loan in 2017 when he learned he might receive compensation from the creditor through a lawsuit. Subsequently, he never ascertained the applicability of the lawsuit to his loan. In January 2023, after receiving the SOR, Applicant contacted the creditor and learned that his loan was not part of the 2017 settlement. He has taken no further action to address or dispute the debt, except to make one payment. He has not established a reasonable basis to dispute the legitimacy of this debt. 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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant served active duty in the Army on two separate occasions and received an honorable discharge. He continues to serve as an Army Reservist. He previously experienced financial difficulties in 2010, and was granted a clearance conditioned on demonstrated financial stability.

Recently, Applicant began taking steps toward establishing payment plans and resolving some of his delinquent accounts. However, he has not taken sufficient steps to address or dispute his largest debt, the vehicle loan. He has not established a reliable financial track record, accompanied by documented steady payments towards resolving his delinquent debts. He has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not provide sufficient evidence to mitigate the financial 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.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.j:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge