



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



In the matter of:)	
)	
)	ISCR Case No. 20-03457
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2023

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

The Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR), dated January 14, 2021, detailing security concerns under Guideline F, financial considerations. The action was taken under 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 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant submitted a response to the SOR (SOR Response) dated February 3, 2021, and requested a hearing before an administrative judge. On April 26, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling

the hearing via video teleconference for June 7, 2022. I convened the hearing as scheduled. Department Counsel offered five exhibits marked as Government Exhibit (GE) 1 through 5. The Government's undated exhibit list and pre-hearing disclosure letter, and my case management order, dated May 5, 2022, are marked as Hearing Exhibits (HE) I through III, respectively. Applicant testified and offered two exhibits at the hearing marked as Applicant Exhibit (AE) A and B. The record was held open until June 22, 2022, to permit Applicant to submit additional documentation, which he did. Those documents were marked as AE C through N. GE 1 through 5, and AE A through N are admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 15, 2022.

Findings of Fact

Applicant is 39 years old. He served in the United States Army from May 2008 to April 2016 and was honorably discharged as a corporal (E-4). He served in the Army National Guard or Army Reserve from April 2016 until 2020. He has attended college since May 2016, earned an associate degree in August 2017, and is pursuing a bachelor's degree. He was unemployed from May 2016 to September 2016. He has been employed as a mechanic for two different contractors under the same federal contract since September 2016. He reported having a security clearance since 2008. (GE 1-2; AE G; Tr. 11, 17-18, 32, 42-50, 53-56, 77-80, 109-111)

The SOR alleges that Applicant has six delinquent debts totaling approximately \$70,734, including \$64,826 in child support arrearages (SOR ¶¶ 1.a, 1.b and 1.c) and \$5,908 for three other delinquent debts (SOR ¶¶ 1.d, 1.e and 1.f). Applicant admitted all SOR allegations with explanation. (SOR Response; Tr. 17-22)

Applicant married in November 2011, separated in July 2018, and at hearing stated his intent to obtain a formal separation agreement or divorce but had not yet done so. He has one child, age six (CH4), from the marriage and provides \$250-\$350 per month in child support. He has three children from other relationships, ages 19 (CH1), 16 (CH2) and 9 (CH3). (GE 1-2; Tr. 33-38, 71-73)

Applicant attributes his financial difficulties to the cost of supporting four children, a reduction in his income when he served in the Army, underemployment, unemployment, and judges' decisions not to credit all financial support he had provided his children when determining past-due child support. He testified that he attended a financial class while in the Army but said that he has not received financial counselling for the SOR debts. (SOR Response; GE 2 at 4-5; Tr. 53-54, 61-69, 85-90, 97, 02-108)

The SOR allegations and relevant evidence are summarized below.

SOR ¶ 1.a: child support arrearages in the amount of \$35,788 (CH3). Applicant admitted the allegation, reported a court-ordered garnishment of his pay for current and past-due child support, and that his income tax refunds were withheld to pay arrears. He testified that he paid approximately \$350 per month in child support following CH3's birth in March 2013 for an unspecified period of time, and he submitted a letter from CH3's

mother confirming he provided \$350 in monthly child support until at least March 2014. He testified that CH3's mother went to court because she wanted more child support. In April 2019 a state court ordered monthly child support payments of \$771 including \$642 (current child support) and \$128 (past-due child support). Credit reports submitted by the Government, and pay records submitted by Applicant reflect payments consistent with the April 2019 court order. The May 2022 credit report reflects a past-due balance of \$32,475, and court records dated June 6, 2022, show a total amount due of \$33,049. (SOR Response; GE 2 at 6-7, GE 3 at 7, GE 4 at 2, GE 5 at 4; AE B at 1, AE F; Tr. 27-30, 74-84, 102-105)

SOR ¶ 1.b: child support arrearages in the amount of \$22,302 (CH1). Applicant admitted the allegation, reported a court-ordered garnishment of his pay for current and past-due child support, and that his income tax refunds were withheld to pay arrears. He testified that after CH1 was born in October 2003, he did not have a formal support agreement with CH1's mother but paid for necessities and cohabitated with her and CH1 for about two years. He testified that after they separated, CH1's mother went to court for child support in approximately 2008, that the judge calculated child support and arrearages based upon his earnings at the time, and that the judge did not credit past child support when calculating arrearages. He said that his income decreased significantly in May 2008, when he commenced active duty in the Army, and said that he listed CH1 as his dependent when in the Army. He submitted evidence a July 2015 court order requires monthly withholding of \$846 for total child support. Credit reports submitted by the Government and pay records submitted by Applicant reflect regular payments consistent with that court order. Applicant's obligation to pay current child support terminated in October 2021, because CH1 was emancipated. Since November 2021, the entire monthly withholding has been applied to past-due support only. The May 2022 credit report reflects a past-due balance of \$12,771, and court records of June 6, 2022, show a total amount due of \$12,380. (SOR Response; GE 2 at 6-7, GE 3 at 7, GE 4 at 2, GE 5 at 4; AE A, AE B at 2; Tr. 27-30, 38-41, 60-72, 83-88, 105-109)

SOR ¶ 1.c: child support arrearages in the amount of \$6,736 (CH2). Applicant admitted the allegation, reported a court-ordered garnishment of his pay for current and past-due child support, and that his income tax refunds were withheld to pay arrears. He testified that he paid for necessities after CH2 was born in July 2006. In July 2007, a court ordered monthly child support payments of \$302, including \$274 (current child support) and \$27 (past-due child support). Credit reports submitted by the Government and pay records submitted by Applicant reflect regular payments consistent with that court order. The May 2022 credit report reflects a past-due balance of \$5,929 and court records dated June 6, 2022, show a total amount due of \$6,199. (SOR Response; GE 2 at 3-4; GE 3 at 3; GE 4 at 2; AE B at 3; Tr. 27-30, 70-74, 88-90, 106-109)

SOR ¶ 1.d: credit account charged off for \$998. Applicant admitted the allegation, and stated that he had paid the debt. Credit records from 2019 and 2020 reflect the account was opened in June 2014, transferred or sold and assigned for collection in March 2017, and subsequently charged off. Applicant reported the debt in his January 2019 SCA and told background investigators that he was in the process of settling the

debt. He testified that he received a settlement letter reflecting the debt was resolved in about 2020 and would provide documentation after the hearing. After the hearing he submitted evidence that he contacted the company identified as collecting the debt in the March 2019 credit report, and that the company representative was unable to locate an account under his name or social security number. This debt is not resolved. (SOR Response; GE 2 at 3; GE 3 at 4, 7; GE 4 at 2-3; AE E; Tr. 23, 30; 90-92)

SOR ¶ 1.e: loan account charged off for \$4,575. Applicant admitted the allegation, stating that he had paid the debt. Credit records reflect the account was opened in March 2016, charged off in November 2017, purchased by another lender with no balance and nothing past due in May 2022. Applicant submitted a June 2022 letter stating that the debt had been settled in full on an unspecified date. This debt is resolved. (SOR Response; GE 3 at 4, GE 4 at 2-3, GE 5 at 7; AE D; Tr. 92-95, 122-127)

SOR ¶ 1.f: medical collection account for \$335. Applicant admitted the allegation and provided documentary evidence that he settled this debt in May 2020. This debt is resolved. (SOR Response; AE C; Tr. 23, 31, 95-97)

Applicant's pay records from July 2020 through January 2021 show that he earned \$29 per hour or about \$4,694 per month, and that after deductions for child support, insurance and taxes, his net monthly income was about \$1,770. He said that his pay had recently increased to about \$32 per hour, that he received \$1,800 monthly from the Department of Veterans Affairs (VA) for a 70% disability rating, and also earned \$150-\$600 per month for mowing grass and repairing small engines. He estimated that his bank account balance was approximately \$2,600 and his retirement account balance was about \$9,000. His monthly expenses include rent (\$550), auto loan payments for a 2016 economy vehicle (\$406), utilities, food and other miscellaneous expenses. He did not provide a written monthly budget but said that he had no disposable income after monthly expenses and could not afford to pay more towards his child-support arrearages. He estimated that he could pay all past-due child support within about five years. His May 2022 credit report reflected an improved financial situation, and the three child support accounts were the only past-due accounts listed. (SOR Response at 4-9; GE 5; Tr. 45, 51-54, 83-88, 97-102)

Applicant completed extensive training and many schools while in the Army. He was a qualified "wheeled vehicle mechanic," and deployed to Afghanistan for an extended period. He earned the Afghanistan Campaign Medal with two campaign stars, three Army Commendation Medals, two Army Achievement Medals and other military awards and decorations. He submitted letters of recommendation from an Army sergeant first class, a colleague, and a local official. They favorably commented on his meticulous work ethic, responsibility, technical skills, performance of duties, leadership, adherence to operational security and classified information protocols, dependability, honesty, value to his organization, judgment, maturity, and devotion to his children and to youth sports. He also submitted certificates recognizing his outstanding contributions to his employer. (AE G-N)

Policies

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt "will be resolved in favor of the national security." Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other

issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

Applicant's admissions and the Government's evidence establish the disqualifying conditions in AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following AG ¶ 20 mitigating conditions 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; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are long-standing, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's reduction in income when he joined the Army in 2008, a short period of unemployment in 2016 after completing his active Army service, and his marital separation were conditions largely beyond his control. However, he has not acted responsibly regarding some of his financial

obligations. His child-support arrearages are being paid by involuntary garnishment of his pay and involuntary diversion of his tax refunds. He claimed that the debt alleged in SOR ¶ 1.d was paid, but he submitted no documentary evidence to support his claim.

AG ¶ 20(c) is not established. He submitted no evidence of financial counseling.

AG ¶ 20(d) is established for the delinquent debts alleged in SOR ¶¶ 1.e and 1.f, which are resolved. It is not established for the other debts alleged in the SOR. The child-support arrearages alleged in SOR ¶¶ 1.a-1.c are being paid by involuntary payroll deductions pursuant to court order or tax refund interception, which are not the equivalent of good-faith payments. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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 Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were already addressed, but some warrant additional comment.

I considered Applicant's age, education, employment history, favorable character letters, and his honorable military service including his deployment to Afghanistan, military medals and awards. I considered that he has resolved two delinquent accounts totaling \$4,910, had reduced his child support arrearages by at least \$14,042 prior to his hearing, was on schedule to pay all arrearages alleged in SOR ¶ 1.b in 2023, and expected to pay all past due child support within five years.

However, his apparent irresponsibility in providing sufficient child support for three of his children resulted in court-ordered garnishment of his pay in 2007, 2015 and 2019,

and the \$64,826 in arrearages alleged in SOR ¶¶ 1.a-1.c. The reduction in the past-due child-support was attributable to involuntary withholdings, and mostly to a court-order requiring the entire withholding for CH1's support be applied to past-due child support after CH1 was emancipated in October 2021. At hearing, Applicant still owed approximately \$50,000 in past-due child support.

The Government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke access to such information. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. See, e.g., ISCR Case No. 98-0188 (App. Bd. Apr. 29, 1999). Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security. Directive, Enclosure 2, App. A ¶ 2(b).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

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

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is denied.

Eric C. Price
Administrative Judge