



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



In the matter of:)
)
) ISCR Case No. 20-01466
)
Applicant for Security Clearance)

Appearances

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

05/24/2023

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

Applicant submitted a security clearance application (SCA) in August 2019. On August 31, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 requested a hearing before an administrative judge in an undated answer to the SOR (Answer). On March 24, 2023, the Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on April 14, 2023. My case management order, the Government's exhibit list and pre-hearing disclosure letter are marked as Hearing Exhibits (HE) I through III. Department Counsel offered five exhibits marked as Government Exhibits (GE) 1 through 5. GE 1 through 4 were admitted into evidence without objection. I sustained Applicant's objection to GE 5. Applicant testified but offered no documentary evidence. The record was held open until May 5, 2023, to permit Applicant to submit documentary evidence, which he did not do. DOHA received the hearing transcript (Tr.) on May 1, 2023.

Findings of Fact

The SOR alleges 34 delinquent debts totaling approximately \$87,267, including 22 delinquent student-loans totaling \$66,601 and 12 delinquent credit accounts totaling \$20,666. In Applicant's Answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 39-year-old property and asset management analyst employed by a defense contractor since September 2017. He was employed as a laborer from July 2009 to July 2014, a warehouse coordinator from July 2014 to July 2016, and worked in retail sales from May 2016 to January 2023. He has never held a security clearance. (GE 1; Tr. 14, 29, 35-42)

Applicant attended a university from August 2001 to May 2003, a state college from 2007 to 2009, and enrolled in a different college in 2021, but has not earned a degree. He married in July 2013 and has been separated since September 2020. He has one child, age nine. (GE 1; Tr. 29-31, 33-34, 117-127)

Applicant attributes his financial problems to unemployment, underemployment, financial support to extended family members, and mistakes. (Tr. 95-97, 110-117) He testified that he admits his mistakes, continues to try and correct them, and has made steady progress on his delinquent debts. (Tr. 25-28, 109)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: auto loan charged off for \$8,177 for repossessed vehicle. Applicant admitted the allegation. (Answer; Tr. 25) He testified that the loan was for his wife's vehicle, that after falling behind on payments they contacted the creditor and made small payments to avoid repossession but could not afford the required payments. The vehicle was repossessed and sold at auction, and Applicant was notified that the deficiency balance was approximately \$8,000. (Tr. 52-67) Credit records show the account was opened in February 2015, delinquent from August 2019 to January 2020, and charged off for \$6,806 with a past-due balance of \$8,177. (GE 2 at 7, GE 3 at 2, GE 4 at 7) This debt is not resolved.

SOR ¶¶ 1.b-1.i and 1.u-1.hh: student loans placed for collection totaling approximately \$66,601. Applicant admitted each allegation. (Answer; Tr. 25) He testified that he incurred \$30,000-\$40,000 in student loans from 2001 to 2003 and 2007 to 2008, that he could not afford to make the required payments, and that he had sought and qualified for deferment or forbearance on several occasions. (Tr. 67-77, 121) He said that he had not communicated well with his creditors, but that he had made some payments, perhaps as recently as 2021, and resolved some of the debt. (Tr. 72-73, 79-80, 99-102, 127) He noted that his federal income tax refund for tax year 2019 was withheld to pay his delinquent student loans. (Tr. 46) In 2021, he was told that he was not eligible for additional student loans. (Tr. 78-79, 102). He said that consolidating his student loans and paying them off was “on his list of things to do.” (Tr. 102) He testified that prior to the hearing, he had engaged in email communications regarding student-loan payment options and his possible eligibility for additional deferments. (Tr. 80-82) He provided no documentary evidence to support his claims that he had contacted his student-loan creditors or made payments on his student loan debt.

Credit reports from March 2020 and August 2019 show the debts alleged in SOR ¶¶ 1.b-1.i, and SOR ¶¶ 1.u-1.x and 1.z-1.hh, as past due and assigned to the government for collection. (GE 3 at 2-3, GE 4 at 11-14) After careful review of the credit reports I have determined that the debts alleged in SOR ¶¶ 1.b-1.i are duplicated in SOR ¶¶ 1.u, 1.v, 1.z-1.bb,1.dd, 1.ff, and 1.hh and find those allegations for Applicant. A February 2021 credit report shows 13 student loan accounts totaling \$36,180 past due and assigned to the government for collection. (GE 2 at 4-7)

SOR ¶¶ 1.j-1.k: telecommunications accounts placed for collection of \$1,190 and \$1,463. Applicant admitted the allegations. (Answer; Tr. 25) He testified that when he and his wife were unable to make payments in about 2019, he contacted the creditors about settlement but had not settled the accounts. (Tr. 82-85) He said that he was in the process of trying to settle his individual debts or enter a debt-consolidation program. (Tr. 83) Credit reports reflect the accounts were placed for collection prior to August 2019. (GE 3 at 3, GE 4 at 8-9) He provided no documentary evidence of efforts to resolve the delinquent debts.

SOR ¶ 1.l: credit card charged off for \$290. Applicant admitted the allegation. (Answer; Tr. 25) Credit reports show the account was charged off for \$290 and that Applicant paid the charge off. (GE 2 at 10, GE 3 at 3, GE 4 at 9) This debt is resolved.

SOR ¶¶ 1.m-1.q: medical accounts placed for collection of \$344; \$1,620; \$148; \$753; and \$499. Applicant admitted the allegations. (Answer; Tr. 25) He testified that the debts were delinquent insurance co-payments for family medical expenses including hospital visits, urgent care, testing, and office visits in about 2018 or 2019 that he could not afford to pay. (Tr. 86-90) He said that he was not in a payment plan, but planned on paying the debts, believed that some of them no longer appeared on his credit report, and thought that some of the debts had been resolved. (Tr. 90-91) A credit report

reflects the accounts were placed for collection no later than August 2019. (GE 4 at 9-10) He provided no documentary evidence that the debts were resolved.

SOR ¶¶ 1.r-1.s: apartment debts placed for collection of \$3,235 and \$2,720. Applicant admitted the allegations. (Answer; Tr. 25) He testified that the debts were for two apartments he leased from about 2012 to 2014. He moved about two months before the first lease term ended because he was unsatisfied with the property manager's response to criminal activity. (Tr. 32, 91-92) He was required to vacate the second apartment due to nonpayment of rent. He notified the landlord that he had been laid off and made some rental payments but was asked to vacate after falling about two months behind on rent. (Tr. 95-97) He understood that he was responsible for arrearages on both leases but did not believe they would be so much. (Tr. 93-95, 97) He did not communicate with his landlords after vacating the apartments because he did not see the debts on his credit report and hoped they would not be reported. (Tr. 94-95, 97-98) Credit reports from August 2019 and March 2020 reflect both debts were placed for collection; neither debt is reflected in a February 2021 credit report. (GE 3 at 2, GE 4 at 10-11, GE 2)

SOR ¶ 1.t: insurance debt placed for collection of \$227. Applicant admitted the allegation. (Answer; Tr. 25) He testified that he planned to pay or negotiate a payment arrangement in the near future because it is a "smaller amount out of all the other debt that I have." (Tr. 98) He said that he did not contact the creditor when the account became delinquent, but that he tried to pay it down before it was charged off. (Tr. 98) Credit reports reflect the debt was placed for collection and one report states that "consumer disputes this account information." (GE 2 at 1, GE 4 at 11) He provided no documentary evidence of any payment on this debt or of a reasonable basis to dispute the legitimacy of the debt.

Applicant testified that he earned \$1,500-\$2,000 per month while working in retail from May 2016 until September 2017. (Tr. 42-43) He earned approximately \$27,000 per year, when hired by the defense contractor in September 2017, and his gross annual salary has increased to \$66,000. (Tr. 38-42, 103) He did not provide a financial budget, but estimated his monthly expenses at approximately \$3,000, including his car payment (\$600). (Tr. 103-108) He said that he has less than \$1,000 left after monthly expenses. (Tr. 108-109) His total bank account balances are approximately \$2,000 and he has a retirement account but does not know the current balance and has borrowed from the account to pay off some debts. (Tr. 109) He has not sought financial counseling. (Tr. 103)

Applicant testified that he failed to file federal income tax returns for tax years 2017, 2020, and 2021. He said that he attempted to electronically file returns for tax years 2021 and 2022, but that they had been rejected. He also said that he was working with a tax preparer and intended to submit all delinquent federal income tax returns. (Tr. 43-50) Any derogatory information not alleged in the SOR will not be considered for disqualifying purposes; however, it may be considered in the application of mitigating conditions and in a whole-person analysis.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.” *Egan*, 484 U.S. at 531.

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 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 evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following 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;

(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, ongoing, and not incurred under circumstances making recurrence unlikely. His delinquent debts and behavior cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment and underemployment were largely beyond his control. However, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶¶ 20(c) and 20(e) are not established. Applicant has not received financial counseling, and he has not provided a reasonable basis for disputing any SOR debt.

AG ¶ 20(d) is not fully established. Applicant resolved the \$290 debt alleged in SOR ¶ 1.i. However, he provided insufficient evidence to support a conclusion that he has initiated or is adhering to a good-faith effort to repay his creditors, or otherwise resolve debts alleged in SOR ¶¶ 1.a-1.k, 1.m-1.t, 1.w-1.y, 1.cc, 1.ee, and 1.gg. Applicant provided no documentary evidence to support his claims that he contacted some creditors or made payments on some delinquent debts alleged in the SOR including his student loans dating back to at least 2005. See ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021).

Applicant bears the burdens of production and persuasion in mitigation. He is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). Applicant has not met his burden.

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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant's age, education and employment history, and that his financial problems were caused, in part, by circumstances beyond his control. However, Applicant has not demonstrated a reliable financial track record in addressing his delinquent student loans and other delinquent debts. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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 raised by his delinquent debts.

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.k, 1.m-1.t, 1.w-1.y, 1.cc, 1.ee, and 1.gg:	Against Applicant
Subparagraphs 1.l, 1.u, 1.v, 1.z-1.bb, 1.dd, 1.ff, and 1.hh:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge