



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



In the matter of:)	
)	
)	ISCR Case No. 21-02216
)	
Applicant for Security Clearance)	

Appearances

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

05/18/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 23, 2020. On October 21, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD issued the SOR under Executive Order 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, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant subsequently submitted an unsigned, undated Answer to the SOR in which he addressed each allegation and requested a hearing before an administrative

judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 6, 2023. On January 18, 2023, following consultation with the parties, DOHA issued a notice scheduling the hearing for February 6, 2023. The hearing was to take place virtually, through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, an updated SOR response. (Tr. 59-60) I left the record open until February 21, 2023, to allow him the opportunity to submit additional information. He timely submitted several exhibits, which I have marked as AE B through AE E, all of which are admitted without objection. AE B is a November 2021 agreement with a credit repair service. AE C is a February 2023 credit bureau report (CBR). AE D is comprised of several documents concerning car payments. AE E is comprised of Applicant's paystubs from 2020 to 2022. DOHA received the transcript (Tr.) on February 16, 2023.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 1.j and denied SOR ¶¶ 1.b-1.h, 1.j, 1.k, and 1.l, all with brief comments about their current status. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He has never married. He has a 12-year-old son. He has a high school diploma and some college credits. He has been employed in the defense industry, with a clearance, since 2010. He has been in the same position but began working under a new contract in December 2022. He earns an annual salary of about \$100,000. (GE 1; Tr. 11, 51, 54-55 82)

Applicant disclosed child support debt and an auto repossession on his SCA, and he discussed those and other debts in his background interviews. (GE 1, GE 2) The debts are listed on CBRs from August 2020, September 2020, April 2021, and May 2022. (GE 3 – GE 6) The Guideline F allegations in the SOR total about \$69,546. The current status of his SOR debts is as follows:

SOR ¶¶ 1.a (\$18,304) and 1.c (\$15,128) are the same debt. SOR ¶ 1.a is a judgment issued against Applicant in March 2021 by the creditor for SOR ¶ 1.c. The judgment includes attorney's fees and interest. (GE 3, 4, 5, 7) Applicant admitted the debt in his Answer and said he was paying it. This debt relates to an auto loan that Applicant cosigned for Ms. R, the mother of his son. He believes she is responsible, so he is not making payments. They bought the car together several years ago. He began paying on the debt in 2021 for about a year and a half at about \$350 a month. He then gave the lender Ms. R's name for them to get payments from her. He said he now pays \$120 per month but also said he is no longer making payments. The car was badly damaged in a fire. (Tr. 27-35, 55-64, 75-76)

A February 2023 credit report lists this account as having been charged off, with a balance due, probably after resale of the car, of \$8,161. (AE C) The balance may also have been reduced by a garnishment from Applicant's pay, generally for about \$330, reflected in his biweekly paystubs since about March 2022. (AE E)

SOR ¶ 1.b (\$16,381) is an account placed for collection by a financial institution or lender. Applicant denied the debt and said it was no longer on his credit report. (GE 4, 5; Tr. 58) He explained that this was a second car for which he co-signed with his girlfriend, but he could not recall which car this debt related to. (GE 2; Tr. 61-62, 64-66) He provided no documents about this debt.

SOR ¶ 1.d (\$2,323) is a debt placed for collection. (GE 4, 5) Applicant denied the debt and said it was no longer on his credit report. At his hearing, he asserted it was paid. It is a loan from many years ago. (Tr. 42-43) He provided no documents about this debt.

SOR ¶ 1.e (\$603) is a bill placed for collection by a cable or internet company. (GE 3, 4, 5) Applicant denied the debt, said it has been charged off, and is being disputed by the debt relief company he retained in November 2021, as further discussed below. At his hearing, he asserted that the debt had been paid. The bill resulted from a dispute over equipment he said he had returned several years ago, and he does not believe he owes anything. (Tr. 43-44) He provided no documents about this debt.

SOR ¶ 1.f (\$278) is an account placed for collection by a power company. (GE 4, 5) Applicant denied the debt and said it was no longer on his credit report. It is an unpaid or disputed power bill from a prior residence. He says it has been paid. (Tr. 45) He provided no documents about this debt.

SOR ¶ 1.g (\$459) is an account that has been charged off by a financial services company. (GE 4, 5) This is a leasing or purchasing agreement for a TV set. Applicant said the debt has been paid. This is supported by a 2020 credit report. (Tr. 45, 76-78; GE 6 at 7)

SOR ¶ 1.h (\$11,294) is a charged-off auto debt. (GE 4, 5) Applicant denied the debt and said it is being disputed by the debt relief company. He then acknowledged sole responsibility for the car. He is no longer in possession of it. (Tr. 41, 62, 66-67) The debt is listed on a February 2023 credit report in charged-off status, with a balance of \$12,296. (AE C)

SOR ¶ 1.i (\$3,043) alleges past-due child support. (GE 5) Applicant admits the debt and says he is paying. He pays \$860 per month in child support for his child with Ms. R, and has done so for about four years. He has joint custody of his son. He wants to restructure the child support requirement. He is unsure why there is, or was, a delinquency in the payments. (Tr. 39, 51-53) Applicant provided pay stubs from 2020 to 2022, which show regular bi-weekly child support payments for about \$341.53 taken out of his pay. (AE A) This would total about \$683 a month, not \$860. But his child support requirement is being paid and resolved.

SOR ¶ 1.j (\$774) is an account placed for collection by an apartment complex. (GE 5) Applicant denied the debt and said it was no longer on his credit report. He said it is a security deposit that has been paid. He acknowledged there was “a hole in the wall and stuff like that” when he left, so they kept the security deposit. (Tr. 46-47) He provided no documents about this debt.

SOR ¶ 1.k (\$566) is a debt to an unidentified medical creditor, an account that has been placed for collection. (GE 5) Applicant denied the debt and said it was no longer on his credit report. This was from an ER visit from about three years ago when he did not provide his insurance card. He said it was paid by insurance. (Tr. 47) The debt is listed on a February 2023 credit report in collection status, with a balance of \$570. (AE C)

SOR ¶ 1.l (\$393) is an account that has been charged off by a large department store. (GE 5) Applicant denied the debt and said it was no longer on his credit report. He took out an account and had a small bill, which he said he paid. He could not explain the origin of the \$393 debt and does not recall if it has been paid or resolved. (Tr. 48) He provided no documents about this debt.

Applicant first contacted debt relief company W in 2018 to assist in fixing his credit but did not formally retain them until November 2021. He was paying them \$300 a month but is no longer paying them. (Tr. 85-86, 88; AE B) He asserted that they had removed all of the SOR debts from his credit report but for SOR ¶ 1.b and the child support debt at SOR ¶ 1.i, both of which he was paying. He was unable to provide the basis for which the other debts had been removed from his CBR. He noted that many of the debts are several years old and he took steps to have them removed from his credit report. (Tr. 36-40, 49-50 68-70, 78) AE B does not show that company W took any steps to challenge or resolve any particular debt, alleged or otherwise.

AE D concerns the payments for Applicant’s current car, a 2020 domestic sedan. He said he bought the car in 2020 for \$15,000. He is current on his payments. (Tr. 71) The account is also listed on a February 2023 CBR. According to both AE C and AE D, he is current on his monthly payments (of about \$560) but owes about \$24,200.

Applicant receives about \$2,600 biweekly after taxes. Expenses listed are about the same. (Tr. 72-75) He acknowledged that he owes \$2,000 to \$3,000 in past-due income taxes from 2012 to 2014 because of a tax preparer’s error. He is resolving this through a tax relief service. He has no unfiled tax returns. (Tr. 79-82) The debt relief service offered him some credit counseling about minding his spending and being more aware of his credit. (Tr. 86-87)

Applicant testified that his financial problems were due to immaturity, financial inexperience, and being overly generous. His son’s mother was also not working at the time, and he had to assume financial responsibility for her and their son. His mother also passed away in 2018, which caused hardship. He said he has learned the error of his ways and will work to improve in the future. (Tr. 96-100) A February 2023 credit report shows a credit score of 563, and a “poor” credit rating. (AE C)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has 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).

The adjudicative 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(a), the entire process is a conscientious scrutiny of several 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 access to classified information 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 avoided drawing 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 as to obtaining 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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

The Guideline F allegations in the SOR concern multiple debts, including consumer debts and several auto repossessions. The SOR debts are established by credit reports in the record and by Applicant's testimony. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or 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 became significantly over-extended financially when he was younger. He cosigned on two cars with the mother of his son, and bought another car for himself. All three of those cars led to repossessions, and none are resolved. He has other consumer debts, and past-due debts from household expenses like rent, utilities, and cable. His financial issues have continued for several years and are ongoing. The fact that several of Applicant's debts are old enough to have dropped off his credit report or became charged off does not mean he is no longer responsible for them. His financial issues are not isolated and continue to cast doubt on his current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

AG ¶ 20(b) does not apply. Applicant experienced some financial hardship after his mother passed away, and the employment status of his son's mother is unclear, but he has been gainfully employed since about 2010 and makes a good living. He also acknowledged that his financial problems are due to his own immaturity and inexperience, rather than an outside cause.

Applicant has pursued some credit counseling through the debt relief company, but he has not provided sufficient evidence that his debts are being resolved or are under control. AG ¶ 20(c) does not apply.

AG ¶ 20(d) has little application. He is paying on his child support obligation and appears to be paying or resolving SOR ¶ 1.a, for which he now owes less than alleged. But he has taken little to no other action to pay, resolve, or settle his other debts. He did not provide enough evidence to support a finding that he has made a good-faith effort to rectify his financial issues. To do that, he needs to establish more of a track record of steady payments towards his debts.

Applicant disputed most of his debts, asserting that they were either resolved by the debt relief company or because they were charged off and had fallen off his credit report. Neither claim is sufficient to establish that he is no longer responsible for those debts. 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 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(a), 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 has a history of financial instability, going back to his younger days. Applicant's debts will remain a security concern until he shows a documented track record of good-faith efforts to resolve them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not provide sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge