



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



In the matter of:)	
)	
)	ISCR Case No. 20-01621
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2023

Decision

PRICE, Eric C., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

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 answered the SOR (Answer) on September 30, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 25, 2022. On February 13, 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 March 1, 2023. The 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 six exhibits marked as Government Exhibits (GE) 1 through 6. Applicant testified and offered two exhibits marked as Applicant's Exhibits (AE) A and B. The record was held open until March 29, 2023, to permit Applicant to submit additional documents. He timely submitted AE C through E. I sustained Applicant's objection to GE 2 (summary report of his interview with a government investigator) and there were no other objections to the proffered exhibits. GE 1, GE 3 through 6, and AE A through E are admitted in evidence. DOHA received the hearing transcript (Tr.) on March 23, 2023.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all SOR allegations except for SOR ¶ 1.i with explanation.

Applicant is a 48-year-old electronics technician employed by two defense contractors under the same contract since July 2018. He served in the Navy from May 1993 to February 2017, was honorably discharged and retired as an E-7. He worked as an electronic warfare analyst for a third defense contractor from March 2017 to April 2018 and was unemployed from April 2018 to July 2018. He has held a security clearance since 1993. (GE 1; AE D; Tr. 10, 19-20, 48-50, 95-96)

Applicant reported no education or degree in the 10 years prior to completing a security clearance application (SCA) in November 2019. He married in February 1996 and has three adult children, ages 31, 30, and 26. His oldest child is disabled and resides with Applicant and his wife. (GE 1; Tr. 47-48, 88, 92-95)

After retiring from the Navy, Applicant worked for a defense contractor near his final duty station in State 1. His annual salary was \$87,500. He agreed to his wife's request to relocate to State 2 because she had endured multiple moves during his naval career. His family moved to State 2 and purchased a home in December 2017. (GE 3 at 5; Tr. 49-52, 94)

Applicant continued to work and reside in State 1 while seeking employment in State 2. He applied for a promising job opportunity and communicated with a defense contractor in State 2 from January to March 2018. (Tr. 51) In February 2018, he financed a new truck for about \$48,000. (GE 1 at 61-62, GE 3 at 3) In April 2018, he quit his job in State 1 and moved to State 2 in anticipation of being hired into the position he had been pursuing. (GE 1 at 16; Tr. 51-53) He was unemployed from April 2018 to July 2018 because of unexpected delay by the prospective employer. (*Id.*) In July 2018, he accepted a position with the defense contractor in State 2 with an annual salary of \$62,000, about \$23,000 less than he had anticipated. (Tr. 51-53)

In his November 2019 SCA Applicant disclosed approximately \$92,000 of delinquent debt including the past-due truck loan (\$47,000), and an additional \$23,000 of

his wife's delinquent debt. (GE 1 at 41-61) The SOR alleges \$54,011 in delinquent debt including a mortgage past due in the amount of \$16,810 (SOR ¶ 1.a), the truck loan past due in the amount of \$1,600 (SOR ¶ 1.b) and 10 delinquent credit accounts totaling \$35,601. (SOR ¶¶ 1.c through 1.l).

Applicant attributes his financial problems to unemployment from April to July 2018, underemployment including an unanticipated \$23,000 reduction in his annual salary, the purchase of a home in State 2 in December 2017, the cost of maintaining two households from late 2017 to April 2018, and moving expenses. (SOR Response; GE 1 at 42-61; Tr. 49-53, 76-77) He prioritized debts and initially focused on paying the mortgage and other essential bills but continued to fall behind. He considered filing for bankruptcy but decided not to. (GE 1 at 41-61; Tr. 50-56) He used an unsecured credit account to help pay the mortgage and made payments on his truck loan and two credit accounts (SOR ¶¶ 1.a, 1.b, and 1.g and one debt not alleged in the SOR (non-SOR debt)). (Tr. 65-66, 79-80)

Applicant testified that in about December 2020, he entered a debt negotiation agreement with a debt consolidation company (DCC) that included debts alleged in SOR ¶¶ 1.b through 1.f, and 1.h through 1.k, and a non-SOR debt. (Tr. 12, 19-20, 31-41) He said that he paid the DCC approximately \$1,000 per month until he terminated the agreement in December 2022 because of exorbitant fees and slow progress. (Tr. 62) After additional research, he entered into a second debt negotiation agreement with the same DCC in January 2023. (AE B; Tr. 60-64) That agreement addresses \$65,482 of total debt, including the debts alleged in SOR ¶¶ 1.c through 1.f, 1.h, 1.j, and 1.k, and non-SOR debt totaling at least \$33,601, including his wife's personal debt. (AE B at 11-13) He agreed to deposit \$924 monthly into a dedicated savings account beginning in February 2023 for an estimated 53 months to resolve the remaining delinquent debts. (AE B at 3, 11-13, 28-29) He did not provide documents to show payments to the DCC, claiming that he had requested those documents but that the DCC failed to provide them. (AE C) Government Exhibits corroborated his claims regarding his debts and efforts to resolve them. (AE A-B)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: mortgage past due for \$16,810 with balance of \$366,154. Applicant testified that he purchased a home in State 2 in December 2017, fell behind on the mortgage payments while unemployed and underemployed, that he sold the house in approximately April 2022, and paid off the mortgage. (Tr. 29-30, 48-52, 65-66, 70-71, 96) Credit reports show that the mortgage was 120 days past due in December 2019, \$16,810 past due in June 2020, and paid off in March 2022. (GE 3 at 4, GE 4 at 1, GE 5 at 9) This debt is resolved.

SOR ¶ 1.b: truck loan charged off for \$1,600 for repossessed vehicle. Applicant admitted the allegation in his Answer and stated that the debt had been paid. (AE A) He testified that he missed two payments on a truck financed in February 2018, that he voluntarily returned it to the creditor, and paid the deficiency balance after the

truck was sold at auction. (Tr. 30-31, 57-58, 96-99) Credit reports show the truck was voluntarily surrendered and repossessed with a past-due balance of \$1,600 prior to December 2019, that he entered a payment plan in November 2019, and that a \$3,354 payment was made in June 2022 to resolve the debt. (GE 3 at 3, GE 4 at 2, GE 5 at 2, GE 6 at 8)

SOR ¶ 1.c: credit card charged off for \$6,220. Applicant admitted the allegation in his Answer, noted that a DCC was working with the creditor to settle the debt, and submitted documentary evidence that the debt was enrolled with a DCC. (AE A-B) He testified that the DCC was slowly paying down the debt. (Tr. 31-32, 84) Credit reports show the account was opened in 2006, first delinquent in 2018, charged off for \$6,220, subject of a payment plan in February 2020, past due in the amount of \$6,220 in April 2020, and past due in the amount of \$3,227 as of March 7, 2023. (GE 4 at 2, GE 5 at 1, GE 6 at 6) This debt is being resolved.

SOR ¶ 1.d: credit card charged off for \$5,971. Applicant admitted the allegation in his Answer, noted that a DCC was working with the creditor to settle the debt, and submitted documentary evidence that the debt was enrolled with a DCC. (AE A-B) He testified that he was not aware of any payments made by the DCC yet. (Tr. 32) Credit reports reflect the account was opened in 2016, charged off for \$5,971 in 2018 or 2019, and remains past due in the amount of \$5,971. (GE 5 at 1, GE 6 at 11) This debt is not resolved.

SOR ¶ 1.e: credit card charged off for \$5,387. Applicant admitted the allegation in his Answer, noted that a DCC was working with the creditor to settle the debt, and submitted documentary evidence that the debt was enrolled with a DCC. (AE A-B) He testified that he was not aware of any payments made by the DCC yet. (Tr. 32) Credit reports reflect the account was charged off for \$5,387 in 2018 or 2019 and remains past due in the amount of \$5,387. (GE 5 at 1, GE 6 at 11) This debt is not resolved.

SOR ¶ 1.f: credit collection account for \$4,285. Applicant admitted the allegation in his Answer, noting that a DCC had established a payment plan and that the debt would be paid off by October 2023. He submitted documentary evidence that the debt was enrolled with a DCC. (AE A-B) He testified that the DCC had been slowly paying down the debt. (Tr. 33-34, 84) Credit reports reflect the account was placed for collection in September 2019 for \$4,285, that at least one payment was made in November 2021, and that the account was past due in the amount of \$3,887 as of March 7, 2023. (GE 5 at 3, GE 6 at 5) This debt is being resolved.

SOR ¶ 1.g: credit collection account for \$4,118. Applicant admitted the allegation in his Answer and said that he had made payments and reduced the debt to \$1,251. He testified that he was in a payment plan with the creditor and that the debt should be resolved within three months. (Tr. 34-37, 73-74) Credit reports show the account was first delinquent in March 2019, placed for collection in the amount of \$4,118, subject of a payment plan in February 2020, and past due in the amount of \$1,575 as of March 7, 2023. (GE 4 at 2, GE 5 at 1, GE 6 at 7) This debt is being resolved.

SOR ¶ 1.h: credit collection account for \$3,279. Applicant admitted the allegation in his Answer, noted that a DCC was working with the creditor to settle the debt, and submitted documentary evidence that the debt was enrolled with a DCC. (AE A-B) He testified that the DCC initially made no payments on this debt but had recently settled the account. (Tr. 37, 74, 84) Credit reports from April 2020 and March 2023 reflect the account was placed for collection in January 2019 for \$3,279, and past due in the amount of \$3,279. (GE 4 at 2, GE 6 at 6)

SOR ¶ 1.i: credit card charged off for \$2,707. Applicant admitted the allegation in his Answer and said the DCC had established a payment plan with the creditor and paid off the debt. (Tr. 37-38, 74-75) Credit reports from April 2020 and March 2023 reflect the account was delinquent in 2018 and 2019, charged off with a balance of \$2,707 prior to April 2020, and settled in January 2021. (GE 4 at 3, GE 6 at 9) This debt is resolved.

SOR ¶ 1.j: credit collection account for \$1,877. Applicant admitted the allegation in his Answer, noting that a DCC was working with the creditor to settle the debt. He testified that this debt was enrolled with the DCC and that he believed the past-due amount had increased because the DCC might have negotiated a payment plan. (Tr. 37-40, 75; AE A-B) Credit reports reflect the account was placed for collection in September 2019 in the amount of \$1,877, and past due in the amount of \$2,112 as of March 7, 2023. (GE 4 at 3, GE 5 at 3, GE 6 at 5) This debt is not resolved.

SOR ¶ 1.k: collection account for \$1,021. Applicant admitted the allegation in his Answer, noted that a DCC was working with the creditor to settle the debt, and submitted documentary evidence that the debt was enrolled with a DCC. (AE A-B) He testified that he was not aware of any payments made by the DCC yet. (Tr. 39-41, 75) Credit reports show the account was placed for collection in January 2019 in the amount of \$1,021, and with a balance of \$1,021 on March 7, 2023. (GE 4 at 3, GE 6 at 5) This debt is not resolved.

SOR ¶ 1.l: credit account past due in the amount of \$736. Applicant admitted the allegation in his Answer and said that he was working with the creditor to resolve the debt. He testified that prior to the hearing the creditor informed him that the debt was in error and there was no balance due, and that he would have to dispute the debt to clear it from his credit report. (Tr. 41-42, 75-76) After the hearing Applicant submitted evidence that he successfully disputed the debt and that his credit records would be updated to reflect the account as paid. (AE D) This debt is resolved.

Applicant testified that his gross annual salary had increased to \$70,000, and that his spouse now works full-time. (Tr. 76, 94) He provided a current financial budget including monthly net income (\$4,000); Navy retired pay (\$2,000); rent (\$1,500); miscellaneous expenses (\$3,300); and remainder (\$1,200). (AE B at 9-10; Tr. 93) He received financial counseling from the DCC. (AE B; Tr. 69-70)

Applicant testified that his wife had managed household finances since he was deployed or assigned to ships for 17 of his 24 years in the Navy, but that he is more involved now. (Tr. 82-83) Since selling their home to pay off the mortgage, Applicant has rented a small condominium for \$1,500 per month. (Tr. 49, 107) He and his wife currently have no car payment and own a 17-year-old car (formerly their daughter's), and a 19-year-old minivan (gifted by a neighbor). (Tr. 88; GE 6) He no longer uses credit cards and has no open credit card accounts. (Tr. 87; GE 6)

I found Applicant's responses and demeanor at the hearing to be credible and consistent with someone who was reliably telling the truth. After reviewing the entire record, I find that his hearing testimony is corroborated by documentary evidence submitted by the government and his own exhibits. He credibly responded to all questions and was keenly aware of the significance of resolving his debts

Applicant held a security clearance while serving in the Navy and routinely handled classified information without reported incident. (GE 1; Tr. 10, 108) He received at least nine personal awards during his naval service which detail his significant contributions to DOD operations including in Iraq. The award citations note his exemplary performance and character, leadership, unrelenting perseverance, diligence, complete dedication to duty, exceptional professionalism, and judgment. (AE E)

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 record evidence establish 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.

Applicant's financial difficulties began when his family relocated to a different state after he retired from the Navy, and he overextended himself by purchasing a home in that state before securing employment there. Several months later he left a well-paying job near his final Navy duty station to join his family for an employment opportunity that did not materialize as expected. He was unemployed for almost three months before accepting a position that paid approximately \$23,000 less annually than he had anticipated. He contemplated filing for bankruptcy but opted to pay some debts on his own and enrolled the remainder into a DCC payment plan.

As of the date of the hearing, Applicant had paid creditors at least \$29,856 of the \$54,011 of SOR debt as well as some non-SOR debt. He has resolved the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.i, and successfully disputed the debt alleged in SOR ¶ 1.l. He has made substantial payments on and is in the process of resolving the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.g through his DCC payment plan, and the five remaining SOR debts totaling \$12,148 (SOR ¶¶ 1.d, 1.e, 1.h, 1.j and 1.k) are also included in the DCC agreement.

AG ¶¶ 20(a) and 20(b), 20(c), and 20(d) are established for the debts alleged in the SOR. Applicant's financial situation was damaged by circumstances partially or fully beyond his control. He has acted responsibly by prioritizing and paying some of his delinquent debts, seeking financial counseling, and enrolling the remaining SOR debt in a payment plan.

He has a logical and appropriate plan for resolving the remaining SOR debts, and there are clear indications that his financial problems are being resolved and are under control. He has dramatically altered his lifestyle and spending habits. He sold his home and rents an affordable condominium; he voluntarily returned his expensive new truck

and now owns two older vehicles; he has resolved other debt and enrolled the remainder in a payment plan. His income has significantly increased, and he understands the security implications of delinquent debt. His debts were incurred under circumstances making recurrence unlikely and his conduct does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.I.

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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered the entire record including Applicant's work history, security clearance history, and years of service supporting the Department of Defense. I also considered that his financial problems were caused, in part, by circumstances beyond his control including unemployment and underemployment, and that he has acted responsibly regarding his debts.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant 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 [he] 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). Applicant understands what he needs to do to establish and maintain his financial responsibility. He has taken reasonable actions under his unique financial circumstances to address his delinquent debts and has established a "meaningful track record of debt reduction." See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised under Guideline F, financial considerations, are mitigated.

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: FOR APPLICANT

Subparagraphs 1.a-1.l: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric C. Price
Administrative Judge