



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



In the matter of:)
)
) ISCR Case No. 22-00706
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: Chris Snowden, Esq.

08/02/2023

Decision

RICCIARDELLO, Carol G., 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

On May 2, 2022, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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) effective on June 8, 2017.

On May 3, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2023, scheduling

the hearing for June 28, 2023. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 7. Applicant objected to GE 5 and GE 6. His objections were overruled and GEs 1 through 7 were admitted in evidence. Applicant testified and offered Applicant Exhibits (AE) A through P. There were no objections, and they were admitted in evidence. The record remained open until July 18, 2023, to permit Applicant an opportunity to provide additional evidence. He submitted AE P through AE Y. He incorrectly submitted a second exhibit marked AE P. A review of the exhibits shows that the original AE P is included in AE Q. The second AE P is a new exhibit. I have attached both to the record and will refer to AE Q for substantive evidence. There were no objections to the exhibits. They were admitted in evidence and the record closed. DOHA received the hearing transcript on July 13, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.c, and 1.e. He denied SOR ¶ 1.d. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He married in 2012 and divorced in 2021. He has a child from the marriage and shares joint custody with his ex-wife. He served in the military from 2011 to 2016 and was honorably discharged. He has taken college courses but does not have a degree. He has worked for a federal contractor since May 2020. (Tr. 21-26, 28, 80; GE 1)

In December 2011, Applicant received a letter of intent to deny eligibility for a security clearance from the Department of the Navy Central Adjudication Facility (DON CAF). An SOR was included that reported numerous delinquent debts supported by credit reports. The SOR noted that Applicant was aware of most of the delinquent accounts and was unable to pay them. The DON CAF issued a Final Denial of Eligibility for Security Clearance letter in June 2012. (GE 6)

Applicant testified that he resolved his outstanding debts while serving in the military. He said he has held a secret security clearance since approximately 2012. He completed a security clearance application (SCA) in May 2021. In it, he disclosed he was discharged from the military in August 2016 and started a part-time job the same month and worked until June 2017. He then left this employment to accept a full-time position. He disclosed he worked full time until February 2018 and left this position because his mother was sick. He worked full time from February 2018 to April 2019 and disclosed he left this position because he was “about to move after mother died.” He worked part time from April 2019 to May 2020 before being hired by his present employer. He did not disclose any periods of unemployment on his SCA. (Tr. 11, 25, 29, 46; GE 1)

Applicant also disclosed in his SCA that as part of a background check to obtain a security clearance in 2012 while serving in the Navy, he was investigated by the DOD. He stated “I was in sub school. I was told I could be on hold to pay bills down or go to the

fleet. I didn't finish sub school cause I went to the fleet and had another rate in the [N]avy." (GE 1).

Applicant testified that his father was sick and passed away in January 2017. He testified he died on the day Applicant started his job. He stayed in the job for about four months until April 2017. His mother was hospitalized in 2017. In May 2017, he moved back home to take care of her. She passed away in March 2018. Applicant testified that when he moved home, he did not have a job. He said he chose to be unemployed for nine months from May 2017 to March 2018. These dates are inconsistent with the information he provided on his SCA. (Tr. 30-36; GE 1)

Applicant attributed his financial problems to his period of unemployment while caring for his mother. At the time, he was receiving \$400 to \$500 a month from the Department of Veterans Affairs (VA) for disability. He said when his father died, his mother received survivor's benefits and Social Security payments. His father did not have life insurance and they had no savings. He also attributed his financial problems to his divorce, but acknowledged he was responsible for the debts alleged. (Tr. 36-40)

Applicant testified that after his mother passed away, he started working in April 2018 as an apprentice aircraft mechanic at a military base. He left federal employment when he was hired in March 2020 by his present employer where he earns more. Applicant's testimony of his employment dates is inconsistent with his SCA. (Tr. 40-44; GE 1)

As part of his background investigation, Applicant was interviewed by a government investigator in October 2021. He told the investigator that his financial struggles began when his father passed away in January 2017, and he felt responsible to care for his mother and help her continue the lifestyle she had been accustomed to. His financial struggles worsened when his mother passed away in early 2018. He inherited his parents' house, where he was living, and assumed the financial responsibility for the mortgage payments. In his answer to the SOR, he said since his parents passed away "I've just been trying to maintain what's back home. I gave my whole life up to come back home to try [and] buy [the] house and keep the land looking good just like they wanted." He testified that after his parents passed away, his goal was to buy their house. He continued to make the mortgage payments. He testified that his goal is to purchase his parents' house and maintain his credit and to do that he must take care of his debt. (Tr. 51-54, 79; GE 2; Answer to SOR)

Applicant disclosed to the investigator that he had a credit-card account that he used for daily necessities. He recalled to the investigator that the balance at some point was over \$10,000. He said he would contact the creditor to make payment arrangements. When asked if he had more than one account with the creditor, he could not recall. He was confronted with a second credit-card account, and he confirmed it belonged to him. He said he used both credit cards to pay daily expenses, bills, and necessities. Applicant said when his father passed away, the mortgage on his parents' house became

delinquent, and he paid the \$1,200 monthly mortgage. There were other maintenance expenses associated with the house that he paid. The two credit card-accounts are alleged in SOR ¶¶ 1.a (\$18,660) and 1.b (\$17,899).

Applicant testified that he began accumulating credit card debts in about 2017. He said his wife was using the cards, but he also was using them. The credit cards are in his name only. Applicant testified that he made payment arrangements for the debts alleged in SOR ¶¶ 1.a and 1.b with the creditor. He provided a letter from the creditor dated May 31, 2023, stating it confirmed a payment arrangement to begin in June 2023 to pay \$25 a month and it referenced the account in SOR ¶ 1.b. He provided undated documents to show he made payments presumably on the account in SOR ¶ 1.b (based on the balance owed) in the amounts as follows: \$165, \$150, \$15, \$120, \$30, \$90, and \$75. He testified that he had a previous payment agreement from May 2022 and made payments, but he did not keep track of them. He did not provide a copy of this agreement. He said he was making payments “on and off.” He testified that he had been making consistent payments once he received the SOR. He said his agreement was to make two monthly payments on each account for a total of four \$25 payments a month. He provided a document dated June 10, 2023, from the creditor referencing the account in SOR ¶ 1.a and its receipt of \$25 with a remaining balance of \$18,430. It did not reference a payment agreement for this debt, only a payment. Post-hearing, he provided a document to show the current balance on the debt in SOR ¶ 1.b had decreased and was now \$17,614. (Tr. 46-52, 8185-87, 89-95; AE B, C, S, T, V, W)

Applicant was confronted with the collection account in SOR ¶ 1.c (\$2,457). He explained to the investigator that this charge was used to purchase furniture and the original balance was about \$4,000. The account became delinquent in 2017 when he was traveling to visit his father in the hospital and sometimes, he was only working three days a week. He told the investigator he intended to satisfy the balance. (GE 2)

Applicant testified that four years ago he contacted the creditor for the debt in SOR ¶ 1.c and contacted them again a year before receiving the SOR and made them an offer to settle the debt. After receiving the SOR, he contacted the collection creditor but was advised that the statute of limitations had run on the collection of the debt. He said he contacted the collection company and offered to make payment arrangements or settle the debt. He provided a copy of a letter he sent to the creditor. He provided copies of three checks each for \$15 paid to the creditor in June and July 2022.¹ (Tr. 60-67; AE G, J)

Applicant was confronted by the investigator with the collection account alleged in SOR ¶ 1.d (\$233). He told the investigator this was a utility bill for his residence that he overlooked paying when he moved home to be with his mother in 2018. He intended to

¹ In Applicant’s exhibit list he labeled AE G as payments to the creditor in SOR ¶ 1.a. AE G includes three checks drafted from his credit union that is also the creditor in SOR ¶ 1.a. The checks are made out to the collection creditor in SOR ¶ 1.c not the creditor in ¶ 1.a. I have considered these payments in my whole person analysis.

pay it. In his answer to the SOR, Applicant provided proof that the collection account was paid in January 2022. (Tr. 67-68; GE 2; Answer to the SOR; AE H)

Applicant was confronted by the investigator with the charged-off account in SOR ¶ 1.e (\$2,249). He told the investigator that he had purchased a wedding ring for his wife. He said the original balance for the account was \$5,000. He had been paying on the account but when his parents passed his priorities shifted. He intended to satisfy the account. (GE 2)

Applicant testified that he has a payment agreement with the creditor for the debt in SOR ¶ 1.e to pay \$50 a month on the collection account. The letter he provided states: "This letter is to confirm your offer to make a voluntary payment arrangement and your authorization on 05/06/2022 of recurring transfers from your bank account." (emphasis added) He provided documents that show on May 10, 2022, and May 23, 2022, his automatic transfers were \$23.43 and on June 22, 2022, his transfer was for \$23.19. It appears these transfers were automatic. He did not provide documents to show he continued these automatic transfers. He testified he stopped the payments because he was paying other bills. He then provided documents from the creditor beginning in January 2023 that do not reference an automatic transfer but reference a voluntary payment of \$25 that was to be electronically debited. He provided proof he made two payments of \$25 in January 2023, and then one monthly payment of \$25 through April 2023, and two payments of \$25 in May and two \$25 payments in June 2023. (Tr. 69-76, 97; AE D, E, F, Q, R)

Applicant told the investigator that he was able to make payments on his accounts and satisfy his debts. He intended to contact the creditors and make payment arrangements. At that time, he was not on a payment plan with any of his creditors. He told the investigator that his financial stability improved when his VA disability was approved for 100% in March 2021, and he was working full time for his present employer. (GE 2)

Applicant testified that he earns approximately \$46,000 annually from his employment. He said his VA disability rating was increased in April 2022 to 100% and he now receives \$3,971 a month (\$47,652 annually). He also testified his VA disability began in January 2022. His testimony as to the date his VA disability increased differs from what he told the investigator, that is March 2021. He provided a document from the VA, but it does not show the date he began receiving the increased payment. (Tr. 44-46, 87-89; AE P)

Applicant testified he does not have a budget. Post-hearing, Applicant provided a personal financial statement from July 2023. He reports he has \$1,300 in expendable income after he pays his bills. He lists two credit cards that are current with a total balance of approximately \$18,000 that he makes monthly payments of \$250 on each. He also lists his mortgage of \$1,220 a month. He does not list as part of his budget any payments for the debts alleged in the SOR. (Tr. 108; AE Y)

Applicant testified that he took a loan of \$1,200 from his Thrift Savings Plan to pay for football camp for his son. He repays \$80 a month. His 2002 car is paid for. He also has a 2015 vehicle that his monthly payments are \$200. In 2018 or 2019, he purchased a used truck that cost about \$9,000. In 2022, he gave the truck to his teenage son. He estimated his monthly expenses for the truck are \$180 for the loan, \$400 for insurance, and \$280 for gas. He explained "I got him the truck because I couldn't get him a new truck like his friends got. So I was able to give him something, though, and things like that just so he can be happy." He pays \$540 for child support but anticipates this amount may increase due to the new amount for his disability payments. He also expects his child to go to college. He believes his military benefits will cover many of the expenses, but there will likely be additional ones not covered. (Tr. 54-60, 82-85, 100-103)

Applicant was asked if he had filed his federal income tax returns on time and paid if he owed taxes. He stated he had not filed on time in the past five years but did file late, and he was sure he owed taxes. He stated his tax balance had increased. He made two payments of \$25 to the IRS, and he did not have a payment plan. He said he plans to pay his tax debt and now that he has 100% VA disability he will be able to pay. Post-hearing, Applicant provided a document presumably from the IRS website that shows Applicant's 2022 tax year balance is \$582; 2021 tax year balance is \$1,820; and 2020 tax year balance is \$806. (Tr.109-115)

Applicant provided a document to show he took an online quiz from a credit organization that tested his current understanding of credit reports. It stated that when he completed the end of the course, he should take the post-quiz and receive his Document of Achievement. It is unclear whether the scores presented in the document are pre-quiz or post-quiz. There were ten questions and Applicant answered eight correctly and the time taken to complete it was two minutes and eight seconds. A Document of Achievement was not provided. (AE I)

Applicant provided character letters that describe him as responsible, assertive, independent, hard-working, kind, loyal, mature, reliable, valuable, professional, honest, intelligent, disciplined, productive, and a team player. (AE K)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions, in a credibility determination, and in a whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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 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. Directive ¶ E3.1.15 states 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.

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 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. 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had numerous delinquent debts that began accumulating in approximately 2018. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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.

Applicant attributed his financial issues to a period of unemployment when he was traveling in 2016 to see his father before he passed away in January 2017, and when he was caring for his mother before she passed away in March 2018. He also attributed it to his divorce. These were conditions that were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. Applicant stopped paying legitimate bills, lived off of his credit cards, and made the choice not to work for nine months. Although it is understandable that he felt a compelling need to be with his mother, he failed to act responsibly regarding his debts after she passed away. He was made aware that his debts were a security concern when he completed his SCA in May 2021 and when he was interviewed by a government investigator in October 2021. He indicated to the investigator that his VA disability rating was increased to 100%, and he was in a better financial situation. At that time, he indicated his intent to contact creditors and make payment arrangements. He did not begin to address most of his debts until after he received the SOR. He made a payment agreement with the creditor in SOR ¶ 1.e to make recurring automatic payments. He did this for a couple of months then stopped. He resumed six months later. He said he had a payment agreement with the creditor in SOR ¶¶ 1.a and 1.b to resolve both debts. The documents reflect that only the debt in SOR ¶ 1.b is part of the plan that began in May 2023 to pay \$25 a month. I have considered he made sporadic payments. One of his debts is now barred by the statute of limitation. It has been five years since his parents passed away. There is insufficient evidence to conclude Applicant acted responsibly. AG ¶ 20(b) only partially applies.

Applicant's debts may have originally occurred under unique circumstances, but his failure to address them and take meaningful action raises a concern. Based on his financial history, I cannot find they are unlikely to recur. His failure to address his debts or contact the creditors when he said he would casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Although Applicant may have participated in some type of credit counseling, there is insufficient evidence to conclude his financial problems are under control. AG ¶ 20(c) has minimal application.

Applicant provided proof he has made some small payments to his creditors. He provided proof that he resolved the debt in SOR ¶ 1.d but it was four years overdue. One debt is now barred by the statute of limitations. Based on the minimal amount of his payments on large debts despite having expendable income, the short period of time he has made payments, his delay in addressing the debts, and his inconsistent payment history, AG ¶ 20(d) has minimal application.

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(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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I have considered Applicant's military service and disability. I considered Applicant's devotion to his parents during their last stages of life. However, Applicant has an overall poor financial track record, including his failure to timely pay his federal income taxes. Based on his minimal efforts since 2018, I am not confident he is committed to resolving his legitimate debts. I find Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed 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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge