



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-02162
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*
08/22/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant’s unresolved financial tax issues date to 2012. He has accumulated 14 commercial and medical debts since April 2019. His unsupported claims of intending to settle some debts by the end of December 2022 or January 2023, or to begin payment plans in January 2023, are not credible as he has produced no evidence in support of those claims. He has not mitigated the security concerns raised under the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On October 5, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) to retain his security clearance required for a position with a defense contractor. On May 13, 2022, he provided a response to interrogatories (Item 5) regarding the status of his delinquent debts and federal tax issues. He provided two personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). These PSIs occurred on March 25, 2019 (Item 8) and December 10, 2021 (Item 9). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated December 2, 2022, detailing security concerns

raised by financial considerations (Guideline F). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided his answer to the SOR on December 26, 2022. He elected to have his case decided on an administrative (written) record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant on March 15, 2023, by expedited transmission. He received the FORM on the same day. On March 16, 2023, he emailed the Defense Office of Hearings and Appeals (DOHA) that he had received the FORM and would be working on a response. A copy of his email is marked and admitted into evidence as Hearing Exhibit (HE) 1. The original email is in the court file in the blue folder. No additional information was received by DOHA ahead of the April 14, 2023 deadline.

Rulings on Procedure

On page two of the FORM, Department Counsel advised Applicant that he could either file objections, furnish explanations, or submit additional material to clarify the information contained in the PSIs or some other evidence included in the FORM. Also, Applicant was advised that he could object to the PSIs because they lacked authentication by a Government witness. As no response was received by DOHA, the two PSIs and the other seven items in the FORM are entered into the record in their entirety. The case file was assigned to me on June 16, 2023.

Findings of Fact

There are 17 allegations in the SOR. The first two are federal tax allegations. SOR ¶ 1.a alleges a failure to file a federal tax return for tax 2019. SOR ¶ 1.b alleges a failure to pay taxes for tax year 2012. SOR ¶ 1.b through 1.q identify sixteen delinquent accounts consisting of one tax account, 12 commercial accounts, and three medical accounts, amounting to \$18,765. Applicant successfully disputed two accounts identified at SOR ¶¶ 1.p (medical) and SOR ¶ 1.q (commercial), and they were removed from his credit report. The number of creditors is reduced to 14, and the total amount of delinquent debt is reduced to \$17,444, consisting of 11 commercial accounts, two medical accounts, and one tax account. Applicant admitted all allegations in the SOR, but claimed that he disputed a few debts and others no longer appeared in his credit report.

SOR ¶ 1.a alleges that Applicant failed to file a Federal income tax return for 2019. This allegation is based on Applicant's disclosure in his October 2021 security clearance application that he did not file his 2019 Federal tax return. In his December 2021 PSI, he stated that he planned to file his 2019 return when he filed his 2021 return in 2022. (Item 9 at 6) In his December 2022 answer to the SOR, he claimed that he

called the Internal Revenue Service (IRS) in December 2022, and was informed that he did not file returns for tax years 2018 and 2020, and not 2019. In his December 2022 answer to the SOR, he submitted processed federal returns for tax years 2018 and 2020. He owed \$536 for tax year 2018 and \$700 for tax year 2020. However, he did not produce documented evidence to confirm that he filed his 2019 Federal tax return. This allegation has not been resolved.

SOR ¶ 1.b alleges that Applicant owes delinquent taxes to the IRS for tax year 2012. In his October 2021 security clearance application, he stated that he owed the United States (US) Treasury \$1,100 for year 2012. (Item 3 at 50) Pursuant to E3.1.17. of DOD Directive 5220.6, I am amending this allegation by inserting the dollar amount of taxes that Applicant owes (\$1,100) for tax year 2012. He admitted in his May 2022 interrogatory responses that his 2012 Federal taxes were not paid. (Item 5 at 8) He explained in his December 2022 answer to the SOR that he contacted the IRS in December 2022. The agency informed him to address the SOR ¶ 1.a missing returns first, then file Form 9465 for federal tax year 2012. Even though he provided evidence of filing the 2018 and 2020 Federal tax returns, he provided no documentation that he filed federal tax Form 9465, or that he paid the \$1,100 in federal taxes for tax year 2012. The account has not been satisfied.

SOR ¶ 1.c is a credit account that became delinquent in July 2021. (Item 6 at 5; Item 7 at 2) In his December 2022 answer to the SOR, he claimed that he spoke with an agent of the collection agency and negotiated a repayment plan to begin on December 28, 2022, with payments of \$240 a month. With no documented proof of payments, i.e., cancelled checks, a bank statement or ledger, receipts, or other documented verification of payment, the debt is unresolved.

SOR ¶ 1.d is a delinquent account held by a collection agency for the original payday loan creditor. The account became delinquent in January 2022. Applicant indicated in his December 2022 answer that the original creditor advised him that the account had been transferred to a collection agency. When he is contacted by the collection agency, he will pay the account. This account has not been paid.

SOR ¶ 1.e is a phone account that became delinquent in November 2020. (Item 7 at 2) Applicant averred in his December 2022 answer that he entered a repayment agreement calling for payments of \$191 a month for four months. Applicant did not indicate when the payment plan was to begin. Due to the fact that no proof has been provided about when the payment agreement began or to verify payments, this account is unresolved.

SOR ¶ 1.f represents a delinquent payday loan that was transferred to a collection agency in February 2019. (Item 6 at 5; Item 7 at 2) Applicant claims that he called the agent and agreed to pay \$124 a month for five months. The claims are unsupported. The account is unresolved.

SOR ¶ 1.g represents a student loan account that became delinquent in December 2019. (Item 6 at 6) Applicant informed the OPM investigator in December 2021 that he withdrew from some courses because he was sent overseas by his employer. He planned to dispute the debt because he did not believe that he should have to reimburse the school the entire cost of the course when he was enrolled for only a short time. He acknowledged he would pay the debt if his reimbursement request was denied. (Item 9 at 10) In his December 2022 answer to the SOR, he admitted the allegation and claimed that he had set up a payment plan to pay \$100 a month beginning in January 2023. The lack of documented support for his claim results in a finding against him under the allegation.

SOR ¶ 1.h is a shopping credit card allowing the purchaser to pay for items over longer periods of time than normally allowed by other credit-card providers. The account became delinquent in December 2021. (Item 7 at 3) Applicant contended in his December 2022 answer to the SOR that his payment plan required \$130 a month payments for 6 months. The claim lacks documentary support.

SOR ¶ 1.i is a credit-card instrument allowing the debtor more time than other credit-card providers to pay on credit obligations. The account became delinquent in December 2021. (Item 7 at 3) Without documentation in support, Applicant claimed that he resumed payments on the credit account on December 14, 2022. The account is still unresolved.

SOR ¶ 1.j became delinquent in June 2021. (Item 6 at 7; Item 7 at 3) In his December 2022 answer to the SOR, Applicant promised to pay the entire balance in January 2023. The debt is not paid.

SOR ¶ 1.k is a commercial account that became delinquent in March 2022. (Item 7 at 3) Applicant asserted that he paid this account and it should be removed from his credit report. (December 2022 answer to the SOR) The account remains unpaid.

SOR ¶ 1.l is an unidentified unsecured loan that converted to a delinquent account in July 2022. (Item 7 at 4) Applicant intended to pay the account in January 2023. Without documentation in support of Applicant's stated intention, the account remains unresolved.

SOR ¶ 1.m is a medical account that became delinquent in November 2021. (Item 6 at 3) In his December 2022 answer, he claims that he disputed the account. The information included in the CBR entry above does not include a notation showing the account was being disputed. The fact that the account may no longer appear in Applicant's credit report does not negate the fact that he still owes the account. In his October 2021 security clearance application, he recognized the account because he stated he had no insurance at the time, and he nevertheless sought to have the account removed from his credit report. (Item 3 at 55) The debt is unresolved.

SOR ¶ 1.n is a commercial account in which Applicant leased some tires and rims. He apparently signed a 24-month lease for the products. After a week of use, he tried to return the tires and rims, but the dealer would not rescind the contract. Applicant did not believe he should have to pay for rest of the lease for only one week's use. In his December 2022 answer to the SOR, he stated he would start a payment plan in January 2023 paying \$165 a month. No evidence of a payment plan nor payments was produced.

SOR ¶ 1.o is a medical account that became delinquent in July 2021. (Item 6 at 5) In his December 2022 answer, he maintained that he disputed the debt and the debt is no longer on his credit report. Applicant did not furnish a credit report establishing his claim.

SOR ¶ 1.p is a medical account that became delinquent in November 2021. (Item 6 at 6) In his response to interrogatories dated May 13, 2022, Applicant indicated no action had been taken on this debt, thereby acknowledging the debt was his responsibility. In his December 2022 answer to the SOR, Applicant claimed that he disputed the debt and it was no longer on his credit report. The 2021 credit report reflects that he did dispute the debt (Item 6 at 6) and it does not appear in the Government's 2022 credit report. (Item 7) The account is resolved in Applicant's favor.

SOR ¶ 1.q is a credit account currently in collection. The account became delinquent in October 2021. (Item 6 at 6) The 2022 credit report indicates that the balance on the account was zero following Applicant's dispute of the account. (Item 7 at 4) The account is resolved in Applicant's favor.

In his March 2019 PSI, Applicant recalled enrolling in a debt consolidation program in the same month. He recollected that he included four debts in the program. (Item 8 at 11) Subsequently, he noted his participation in another debt consolidation program for an undisclosed period of time. He has never had financial counseling. His May 2022 personal financial statement (PFS) indicates that his monthly expenses exceed his monthly income by \$22. (Item 3 at 49; Item 5 at 11; Item 9 at 11)

Applicant's opined that his financial difficulties were caused after his wife was unable continue working about seven years ago. He remembered making poor financial decisions in the past, but his decisions regarding how he spends his money have improved. He recalled that in the past he was earning a larger salary and was able to pay his bills in a timely manner. He considers that he has the professionalism and integrity to faithfully execute all aspects of his job. His employer will readily support his consistently superlative work record. (Item 5 at 10)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these

guidelines are applied together with common sense and the general factors of 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(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required.

Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The two Government credit reports (GE 6 and GE 7) establish that all debts listed in the SOR changed to a delinquent status between February 2019 and July 2022. Applicant should have understood when he provided his March 2019 PSI and his October 2021 security application that his delinquent debts concerned the Government. When Applicant received the interrogatories in May 2022, he should have realized the seriousness of his financial problems, and the importance of instituting corrective action as soon as possible. In sum, Applicant was placed on official notice that his delinquent debts and federal tax issues posed security concerns. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies because of Applicant's lack of documented action in addressing 13 of the remaining 14 delinquent accounts listed in the SOR. AG ¶ 19(f) applies based on the lack of documentary evidence showing that Applicant filed the federal tax return for 2019 (SOR ¶ 1.a), and that he failed to pay \$1,100 in federal taxes for 2012. (SOR ¶ 1.b)

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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.

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant was unemployed from October 2016 to May 2017; about the same time, he learned his wife could no longer work. However, he has been steadily employed since that period. Though he asserts he has been making more responsible decisions in the last few years, the credit bureau reports show that he has accrued 14 delinquent debts between 2019 and July 2022. His PFS in May 2022 indicates that his monthly expenses exceed his monthly income by \$22. Using payday loans to bridge the gap between paychecks are poor examples of improved financial decisions. Allowing payday loans to become delinquent, exposing the debtor to exorbitant interest rates, demonstrates poor judgment. There is insufficient evidence to find that Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

AG ¶ 20(c) extends mitigation where an applicant has had financial counseling, and there are encouraging signs that his financial problems are being resolved or under control. While Applicant indicated that he participated in two debt consolidation plans, there is no evidence of the outcome of either consolidation plan. He admitted that he never had financial counseling. Applicant presented no evidence of a budget or other method of how he manages his finances. AG ¶ 20(c) does not apply.

AG ¶ 20(d) does not apply because Applicant is not engaged in a good-faith effort to repay 13 creditors or collection agencies. He receives negligible mitigation under AG ¶ 20(e) for successfully disputing and removing the medical account in SOR ¶ 1.p and the credit account in SOR ¶ 1q. SOR ¶ 20(g) does not apply because of the missing 2019 federal tax return and Applicant's failure to pay the delinquent federal taxes for 2012. (SOR ¶¶ 1.a and 1.b)

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that to establish his case in mitigation, an applicant must present a “meaningful track record” of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that he has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant has no plan in place and has furnished no documented evidence of even sporadic payments to 14 creditors or collection agencies listed in the SOR. After a full review of the entire record from an overall common-sense point of view, Applicant’s ongoing financial problems have not been 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.o:	Against Applicant
Subparagraphs 1.p, 1q:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, Applicant has not mitigated the guideline for financial considerations. It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge