



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



In the matter of:)	
)	
)	ISCR Case No. 20-01048
)	
Applicant for Security Clearance)	

Appearances

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

08/17/2023

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

Applicant submitted a security clearance application (SCA) in May 2019. On August 26, 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 28, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2022. On March 20, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on April 26, 2023. The Government's exhibit list and pre-hearing disclosure letter are marked as Hearing Exhibits (HE) I and II. Department Counsel offered six exhibits marked as Government Exhibits (GE) 1 through 6. Applicant testified and offered documents marked as Applicant Exhibits (AE) A through G. The record was held open until May 11, 2023, to permit Applicant to submit additional documents. He timely submitted AE H through T. I sustained Applicant's objection to GE 2 (unauthenticated summary report of his interview with a government investigator), and there were no other objections to the proffered exhibits. GE 1 and GE 3 through GE 6, and AE A through T are admitted in evidence. DOHA received the hearing transcript (Tr.) on May 8, 2023.

Findings of Fact

The SOR alleges 14 delinquent debts totaling \$39,847, including 10 student loans totaling \$37,095 (SOR ¶¶ 1.a-1.j), and four credit accounts in collection for \$2,752 (SOR ¶ 1.k-1.n). In Applicant's Answer to the SOR, he admitted the allegation in SOR ¶ 1.l, with explanation, and denied all other allegations.

Applicant is a 44-year-old senior systems administrator employed by a defense contractor since January 2019. He has been employed in various information technology (IT) positions since 2006, and worked for several federal contractors from April 2014 to November 2018. He was unemployed for one month in 2008, and from November 2018 to January 2019. He served on active duty in the U.S. Army from June 2001 to August 2003, and was honorably discharged because of medical issues. He has a secret security clearance. (GE 1; AE O; Tr. 37-47, 69-70, 96)

Applicant attended a university from 1997 to 1998 and a college from 2004 to 2006; he did not receive a degree but earned several IT certifications. He married in 2001 and has one child, age 20. (GE 1; AE A-B; Tr. 32-35, 39-46, 69)

Applicant attributed his financial problems to his underemployment, unemployment, lack of focus on resolving his student loan debt, costs associated with his wife's education and health, and maintaining two households. (Answer; GE 1; Tr. 29-30, 39-43, 48-56, 61-62, 93-94)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶¶ 1.a-1.j: student loans placed for collection of \$37,095. Applicant denied each allegation explaining that his student loans had been consolidated, were current and within his ability to pay. (Answer; Tr. 30-32, 68-69, 73-79) In his May 2019 SCA, he disclosed \$45,000 in delinquent student loans that he had "put off paying . . . too long and then waited too long to call and make arrangements." (GE 1 at 44; Tr. 28-29) He received the student loans from 1997 to 1998 and 2004 to 2006. (GE 3-6) In 2018, he focused on cleaning up his credit in order to qualify for a mortgage and decided to rehabilitate his student loan accounts. (Answer; GE 1 at 45; AE A; Tr. 28, 55-57) Credit reports from May 2019 and March 2020 showed his student loans as in collection. (GE

3-4) He submitted evidence of student loan payments totaling \$4,200 from October 2018 to November 2019, and \$3,237 from August 2020 to December 2020. (AE H-J) He successfully rehabilitated his student loan accounts by November 2020. (AE H, L; Tr. 29, 75-80) In June 2021, he consolidated the 10 student loans alleged in the SOR into two loans totaling \$33,124. (Answer; GE 5 at 5, GE 6 at 7; AE B-D; Tr. 73-77) In April 2023, the account balance was \$33,114, with no monthly payment required, no past due balance and the last reported payment in February 2023. (GE 6 at 7; AE D; Tr. 80-84)

Applicant said that he communicated periodically with his student loan creditors and that his loans were deferred or in forbearance for a number of years. As his income increased, he focused on supporting his family, including his wife's education. He acknowledged that he had not given sufficient attention to resolving his delinquent student loans. He said that he had negotiated a consolidated student loan payment of "about \$284 a month, but, then the federal government put student loan payments on hiatus because of the coronavirus pandemic." (Tr. 57, 82-86; AE A) He submitted evidence that a standard repayment plan for his student loan debt required monthly payments of \$227 for a period of up to 30 years. (AE K) He stated that he had recently contacted his student loan servicer, that they anticipated payments may restart as soon as September 2023, and that he was ready and able to pay required monthly payments. (Answer; Tr. 57, 68) He also submitted evidence that he filed for student loan forgiveness under the Borrower Protection Act in June 2022 because the school he attended from 2004 to 2006 was deceptive about the transferability of credits earned, misrepresented job placement rates, and did not provide job placement support. (AE A, C; Tr. 29-30) These debts are being resolved. (AE A; Tr. 40-60, 67-68, 73-88, 92)

SOR ¶ 1.k: credit card in collection for \$219. Applicant denied the allegation in his Answer, noting that he had paid this debt and that it was no longer listed in his credit report. He submitted evidence the account was resolved on or before April 24, 2023. (AE E-F; Tr. 66-67) Credit reports dated May 2019 and March 2020 show the loan as past due and in collection for \$219. (GE 3-4) Credit reports dated November 2021 and April 2023 do not list this debt. (GE 5-6) This debt is resolved.

SOR ¶ 1.l: telecommunications account in collection for \$2,389. Applicant admitted that he "may be in debt" for this account, stating that he believed it was over a decade old, no longer valid, and that he disputed the account balance. (Answer). He attributed the debt to his change of cell phone carriers, said that he repeatedly requested an itemized bill from the first carrier to submit to the second carrier for payment under terms of his contract with that carrier, but that the first carrier failed to provide an itemized bill and rejected his offers to resolve the account for a lesser amount. He said the creditor would only discuss the debt over the phone and would not send emails or an itemized bill. He stated that he had communicated with the listed creditor on multiple occasions since 2018 but that they recently informed him that they no longer owned the debt. He testified that he contacted the original creditor prior to the hearing and was told that their database did not reflect an account in his name, "but if [they] found anything, [they] would send [him] a letter." (Tr. 65) Applicant stated his willingness to pay the debt, said that he would continue to try to resolve the debt, and stated his belief that any actual debt was

more than \$1,000 less than alleged. A credit report from May 2019 shows the account as past due and in collection for \$2,389. (GE 3 at 14) Credit reports from March 2020, November 2021 and April 2023 do not list this debt. (GE 4-6; Tr. 64-66)

SOR ¶¶ 1.m-1.n: telecommunications accounts in collection for \$94 and \$50.

Applicant denied these allegations, stating that he had recently paid off one of the debts; that the creditor alleged in the SOR for the other debt was unable to find his account; and that both debts were no longer listed on his credit report. (Answer; AE F; Tr. 63-64) A May 2019 credit report shows both accounts in collection. (GE 3 at 15) Credit reports from March 2020, November 2021, and April 2023 do not list these debts. (GE 4-6) The debts alleged in SOR ¶¶ 1.m-1.n were for different accounts with different companies owned by the same parent company. Applicant said that he contacted the original creditor for the debt alleged in SOR ¶ 1.m and was told that there was no record of that debt, but that he was past-due \$50 on a different account. He submitted evidence that he paid the debt alleged in SOR ¶ 1.n in April 2023. (Answer; AE F-G; Tr. 63-64)

Applicant testified that he filed for bankruptcy in about 2004 after he left the Army. He stated that he received credit counselling during those bankruptcy proceedings, and before purchasing a home in September 2021. (Tr. 88-90) His gross annual income has steadily increased and is now \$126,600. (AE P; Tr. 36-38). His wife works full time and earns about \$90,000 a year. (AE Q; Tr 36) His monthly mortgage payment was about \$2,612 in late 2021 and has increased to \$3,370. (GE 5 at 4; GE 6 at 4; AE R; Tr. 36) His family's written financial budget shows a remainder of \$1,865 a month after monthly expenses. (AE R) He has about \$900 in his checking account and did not know the balance of joint accounts managed by his wife. His wife has two investment accounts with balances totaling about \$194,000. (AE M-N)

Applicant submitted letters of recommendation and emails that favorably commented on his integrity, compliance with rules, performance, character, leadership, diligence, dedication to duty, professionalism, and judgment. (AE S-T)

I found Applicant's responses and demeanor at the hearing to be credible and consistent with his SCA, Answer, and 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 and establishing his financial responsibility.

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 admission and record evidence including credit reports 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.

AG ¶ 20(a) is established for the delinquent student loans alleged in SOR ¶¶ 1.a to 1.j and the debts alleged in SOR ¶¶ 1.k to 1.n. Those debts are resolved or being resolved, occurred under circumstances unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not fully established. Applicant's and his wife's periods of underemployment and unemployment and his spouse's health problems were largely beyond their control. However, he has not provided sufficient evidence that he acted responsibly under the circumstances. The delinquent student loans alleged in SOR ¶¶ 1.a-1.j were incurred because of his lack of attention to his financial obligations.

AG ¶¶ 20(c) and 20(d) are established. Applicant has received financial counseling and his financial problems are under control. He made payments totaling \$7,437 on his delinquent student loans from October 2018 to December 2020, brought his student loans up to date in November 2020, and consolidated them in June 2021. He reduced his student loan balance from \$37,095 to \$31,114, and has the ability and intent to make required payments once the COVID pause ends. See ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022) (“Under the CARES Act of March 2020, Federal student loans were placed in forbearance and collection on defaulted student loans was paused.”)

Applicant has also resolved the debts alleged in SOR ¶¶ 1.k and 1.n. He has communicated with the creditor for the debt alleged in SOR ¶ 1.l but has not been provided an itemized bill for charges that he has contested. He recently attempted to resolve the \$94 debt alleged in SOR ¶ 1.m but his efforts to locate the current creditor and settle the debt have been unsuccessful to date.

AG ¶ 20(e) is not established. Applicant disputes the amount of the debt alleged in SOR ¶ 1.l, but he has provided no documented proof to substantiate the basis of the dispute, or of actions he has taken to resolve the issue.

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 education, work history, and character evidence. He was candid, sincere, and credible at the hearing. There are clear indications that his financial problems are being resolved and are under control. His income has significantly increased, and he understands the security implications of delinquent debt.

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 maintain his financial responsibility.

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.n: 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