



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



In the matter of:)	
)	
)	ISCR Case No. 22-02216
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2023

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 February 13, 2023, the Department of Defense (DOD) 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 within the DOD on June 8, 2017.

Applicant answered the SOR on February 15, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 16, 2023. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7 (Item 1 is the SOR). Applicant submitted a response to the FORM and objected to Item 7, a summary of a personal subject interview, because it was unauthenticated. His objection is sustained, and Item 7 will not be considered. He had no other objections and Items 2 through 6 are admitted in evidence. He provided documents that are marked as Applicant Exhibits (AE) A through D. There were no objections, and they are admitted in evidence. The case was assigned to me on July 31, 2023.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.d, and 1.f. He denied the SOR allegations in ¶¶ 1.b, 1.c and 1.e. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He was married and divorced twice. He has two children ages 10 and 7 years old from his second marriage. He remarried in 2019. He served in the military from 2003 to 2011 and was honorably discharged. He has been employed by his present employer since October 2022.

Applicant completed a security clearance application (SCA) in March 2022. In it he disclosed that he attended college from September 2011 through July 2015, and it appears he took a semester off during that time. He attended again from May 2018 to May 2020 and earned a bachelor's degree. He began taking classes in December 2021 working towards a master's degree. (Item 3)

Applicant disclosed in his SCA that he was unemployed while attending college and used his savings, educational benefits from his military service, and his Department of Veterans Affairs (VA) disability payments to support himself. He disclosed that he owned a business and was self-employed from July 2016 through August 2018. He said he closed the business to pursue his education. (Item 3)

Applicant disclosed two delinquent debts in his SCA. He disclosed a delinquent debt for a credit card. He stated the amount owed was \$5,500 and it was paid in full. He also disclosed a second credit card debt that he said was to be paid by his ex-wife, but it remained on his credit report. It is not alleged in the SOR. (Item 3)

Applicant responded to government interrogatories in September 2022. In them, he was asked to provide information about the debts alleged in SOR ¶¶ 1.a through 1.e. He reported that the debt in SOR ¶ 1.a, which appears to be a small business loan that was charged off in the amount of \$43,741, was not paid. He indicated he had a payment plan and was making payments. The amount alleged in the SOR was \$1,743, which was a fee and not the balance owed. In the FORM, Applicant was advised of the accurate delinquent balance of \$43,741. It had not been paid. He explained that his was a joint loan with his second ex-wife and they were both supposed to pay \$300 a month per a court agreement, until it was paid in full. He said she failed to pay her amount. He did not

provide documentation that he paid his amount or action he took from 2018 to 2023. The original loan was for \$50,000. (Item 4)

In Applicant's SOR answer he stated that he had paid \$1,743 to the creditor in ¶ 1.a and the debt was paid in full. This was only the fee owed which was in addition to the \$43,741 balance owed on the original \$50,000 small business loan. In his FORM response, he said this debt was charged off in 2018. He failed to pay it because he lost his job, and he notified the creditor. He did not provide proof of his notification or subsequent actions. He reported on his SCA that he was unemployed from September 2018 to February 2021 because he was a student and convalescing from a medical issue. He also disclosed that from July 2016 to August 2018, he and his second ex-wife were self-employed as owners of a fitness business that they closed down to pursue higher education. Presumably the small business loan was used to open this business. He also said the pandemic impacted his employment and he became a full-time student to allow him more job opportunities. He said he made payments after the debt was "written off." He did not provide proof of those payments. He stated once he became employed, he reached out to the creditor to make payment arrangements and his account showed only a balance of \$1,743, which he paid on February 7, 2023. He said he reached out again to obtain confirmation of the balance owed and the website was not providing accurate information. It appears there was an issue with the website, and it did not reflect the full balance. He said he now has a payment plan to pay \$400 a month on the balance. Applicant provided email correspondence with the creditor from February 2023 requesting clarification and confirmation about the balance owed. His next correspondence with the creditor is in May 2023 where he indicates he made a payment. He did not provide proof of this payment. He provided a document dated June 6, 2023, whereby the creditor agrees to accept \$400 a month to begin the same month until the balance is paid in full. (Item 4; AE A, B, C)

Applicant reported in the interrogatories that the SOR ¶ 1.b debt (\$7,220 – credit card) was not paid and he had not made payments or payment arrangements. He explained he was not familiar with the account, believing it had to do with a car loan, which he was current on. He provided documents to show his car loan is current, but it is not the same debt. (Item 4)

In Applicant's SOR answer, he denied the debt in SOR ¶ 1.b stating this was a vehicle loan that was paid. It is listed on his April 2022 credit bureau report as an individual credit card debt that was opened in December 2016 and charged off in approximately January 2018. As part of his answer to the SOR, Applicant provided a credit report from February 2023, which clearly lists the debt as a charged-off credit card. The account is reported as an individual account. In his FORM response, he did not provide any information about the status of this debt. It is unresolved. (Items 2, 4, 5)

Applicant reported in his interrogatories that the debt in SOR ¶ 1.c (\$5,381) was not paid, he had not made payments or payment arrangements. In his SOR answer, Applicant denied the debt in SOR ¶ 1.c (\$5,381). Applicant stated he disputed the debt on his credit report. His February 2023 credit report shows the dispute was resolved, and

Applicant disagreed with the resolution. He claimed his accounts with the original creditor are current. His February 2023 credit report shows he has three accounts with the original creditor. However, the account alleged, which was with the same creditor, is now owned by a third-party collector, and that collection account is reflected as unpaid and delinquent. This debt is reported as an individual account. He did not provide additional evidence in his FORM response as to its status. It is unresolved. (Items 2, 4, 5)

Applicant reported in his interrogatories that the debt in SOR ¶ 1.d (\$3,793 – car loan) was not paid but he had made payment arrangements and was making payments. He explained he was unaware of the debt and contacted the creditor. At the time of his interrogatory response, he was waiting for a response from the creditor. Applicant admitted in his SOR answer that he owed the debt in ¶ 1.d (\$3,793) to a car company but said he had been unaware of it. In his SOR answer, he provided a copy of what appears to be a posting from a credit card showing a payment to the creditor on February 23, 2023, for \$350, and one on March 6, 2023, for \$1,500. In his FORM response, he said he made payments towards the debt and continues to do so. He said he had a remaining balance of \$600. He did not provide documents to corroborate any additional payments, a payment agreement, or the current balance. (Item 2 page 38; Item 4; AE C)

Applicant reported in his interrogatories that the debt in SOR ¶ 1.e (\$3,201) was not paid and he did not know what the account was for. He was going to contact the creditor. In his answer to the SOR, he denied the account. He said he contacted the creditor and had not received a reply. He did not provide corroborating evidence of action to resolve or dispute the debt. It is unresolved. (Item 4)

Applicant denied the debt in SOR ¶ 1.f, a charged-off credit card account. He said in his SOR answer that the account was past due when he was deployed, and it was paid in full. He said he has an account with the creditor that is current and active, and he is unsure why it is listed as delinquent and unpaid. Applicant's February 2023 credit report shows three accounts with the same creditor. All three have different account numbers. Two are current and one is charged off in the amount of \$2,253 but shows the charged-off account was paid. This account is resolved. (Item 2)

As part of his response to interrogatories, Applicant provided a personal financial statement. It reflects that he has two credit cards, a car loan (2022 vehicle), and a mortgage that are all current. He does not list any other payments to creditors. He shows his remaining expendable income at the end of the month is \$4,864, which includes his VA disability payment. His assets include a 2021 vehicle (paid), a four-wheel recreational vehicle, a canoe, and gym equipment (valued at \$6,000). He has approximately \$15,000 in savings. It is unknown if his wife is employed. He pays \$600 a month in child support. In his SOR answer, he said his personal financial statement remains the same, except his VA disability payment has increased and his salary from his employer has increased slightly. (Item 2, Item 4 page 9)

In his SOR answer, Applicant attributed his financial issues to when he was going through a divorce and deployments. He said his ex-wife and he shared accounts, and he

thinks some of the accounts may be attributable to her. He said he is financially stable and pays his bills on time. He said his credit has improved since 2018, and he bought a house in 2022. He said he does not have delinquent accounts and has not been late in payments for several years. He claimed he was unaware of the alleged SOR debts until they were brought to his attention during the security review process.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

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

Applicant has numerous delinquent debts that were unpaid for years. 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 persons 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 attributed his delinquent debts to his divorce, deployments, and unemployment. He also suggested that his ex-wife might be responsible for some of the debts. All of the debts alleged, except the small business loan, were individually held by Applicant. He and his ex-wife were equally responsible for the \$50,000 loan they obtained in 2016 and defaulted on in 2018. He claimed he was unaware of his delinquent debts until the security clearance process started. It is not believable that he and his ex-wife obtained a \$50,000 loan in 2016 and chose to shut down the business in 2018 so he could resume his education, but he was unaware that he was still responsible to repay the loan. He stated that both he and his wife were required to pay \$300 a month until the loan was repaid. He did not provide documentary proof that he made his payments. He did not provide evidence of actions he took to resolve the debt until he was confronted with it when he received government interrogatories in September 2022. Admittedly, there was confusion on the balance owed, but it is not believable that he thought he only owed \$1,743. He failed to inquire about the actual balance until after his security investigation began. He paid the \$1,742 in February 2023 and made payment arrangements on the delinquent loan in June 2023. Although Applicant now has a plan in place, his failure to take action, or to provide documentary evidence of previous action taken does not constitute a good-faith effort to repay this creditor. AG ¶ 20(d) does not apply.

Applicant's divorce, deployments, unemployment, and medical issues may have been beyond his control. However, Applicant was discharged from the military in 2011. The debts alleged are not from that time. His unemployment was partly within his control as he chose to shut down his business in 2018 and pursue his education goals. His

medical issue and divorce were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant said he was unaware of his delinquent debts. I have already addressed the small business loan. However, regarding the remaining debts, it is unclear why, if he was running a business and then chose to return to school, he was not paying closer attention to his finances. He became aware of his delinquent debts when he received the government interrogatories in September 2022 that listed them. He has not provided sufficient evidence to conclude he is resolving the debts alleged in SOR ¶¶ 1.b, 1.c and 1.e. AG ¶ 20(b) has some application.

Applicant said he disputed the debt in SOR ¶ 1.c. The credit bureau did not resolve the dispute in his favor. He did not provide any other evidence regarding this debt. He repeatedly claimed the debt in SOR ¶ 1.b was for a car payment that was current. The credit report clearly shows it is a credit card debt on an account individually held. He did not provide evidence of action he may have taken to dispute the debt in SOR ¶ 1.e. He has not provided a reasonable basis for his disputes on these debts, documented proof to substantiate the basis of his disputes, or evidence of actions he has taken to resolve the issues. AG ¶ 20(e) does not apply.

Applicant provided evidence that he made two payments on the debt in SOR ¶ 1.d but failed to provide additional evidence beyond his statement that he is making payments. He provided a personal financial statement that shows he has a substantial monthly remainder of expendable income. Without additional evidence to substantiate that Applicant has continued to make payments towards this debt, I cannot apply AG ¶ 20(d). It does apply to the debt in SOR ¶ 1.f that was resolved in 2020.

There is no evidence that Applicant has received financial counseling. He reports that his finances are under control, and he is paying his bills on time. However, he has not resolved some of the debts alleged in the SOR, so I cannot find there are clear indications that his problems are resolved or under control. AG ¶ 20(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(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. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). Because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about the circumstances that led to his financial problems. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

Some mitigating evidence was provided, but it was insufficient to mitigate the security concerns raised. Applicant failed to meet 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 all these reasons, I conclude Applicant failed to mitigate the security concerns raised 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.e:	Against Applicant
Subparagraph 1.f:	For 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