



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



In the matter of:)	
)	
)	ISCR Case No. 22-01193
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: John Adamson, Personal Representative

11/08/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

In his undated response to the SOR (Answer), Applicant requested a hearing before an administrative judge. The case was assigned to me on March 24, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on April 12, 2023, scheduling the matter for a video teleconference (VTC) hearing on May 16, 2023. I convened the hearing on that date, but then continued it so that Department Counsel could provide a copy of the Government's exhibits to Applicant and his personal representative, as Applicant misplaced the documents that had been previously mailed

to him. DOHA issued another notice on May 18, 2023, rescheduling the matter for a VTC hearing on June 14, 2023. I convened the hearing as rescheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 12 and Applicant Exhibits (AE) A through E, without objection. I sustained Applicant's objection to GE 13, an unauthenticated report of investigation summarizing two background interviews conducted by an authorized investigator in January 2022 and February 2022. At Applicant's request, I kept the record open until July 12, 2023, so that he could submit additional documentation. He timely submitted documentation that I marked collectively as AE F and admitted in evidence without objection. Since AE F contains only a two-page excerpt from Applicant's July 2023 credit bureau report titled "Collections," and not the credit bureau report in its entirety, I will consider this in the weight that I give it. DOHA received the hearing transcript of the initial hearing on May 25, 2023 (Tr. 1) and of the subsequent hearing on June 27, 2023 (Tr. 2).

Findings of Fact

Applicant admitted all the SOR allegations, with explanations. He is 39 years old. He married in 2012, divorced in 2018, and remarried in 2021. He has five minor children. His eldest child is his ex-spouse's niece that they adopted from foster care during their marriage; the next two children are from his first marriage; and the youngest two children are from his current marriage. He graduated from high school in 2012. He has owned his home since 2014. (Tr. 2 at 24-25, 28, 35-36, 42, 67-77; GE 1, 10)

As of the date of the hearing, Applicant has worked for his employer, a DOD contractor, since July 2016. He began as a pipefitter and then he became a nationally certified radiographer in October 2020. He was first granted a security clearance in 2018. (Tr. 1 at 5; Tr. 2 at 5-6, 24, 41-42, 87, 106)

The SOR alleged that Applicant had 13 delinquent debts, totaling \$23,898 (SOR ¶¶ 1.a-1.m) It also alleged that he had six judgments, totaling \$11,073, entered against him between June 2017 and February 2021 (SOR ¶¶ 1.n-1.s). The SOR allegations are established by his admissions in his Answer; his September 2021 security clearance application (SCA); credit bureau reports from June 2016, December 2021, and September 2022; and court records. (Answer; GE 1-12)

Applicant attributed his delinquent debts to his April 2017 separation from his ex-spouse, his August 2018 divorce, and minimal income. At a date not in the record, a court ordered that he and his ex-spouse share joint legal custody of their children but awarded her physical custody and ordered him to pay her \$135 weekly in child support. At that time, he earned \$18 hourly as a pipefitter, and she earned approximately \$20 hourly as a pharmacy technician. In addition to paying for his living expenses and child support obligation, he was responsible for paying the mortgage. The divorce decree stated that "[b]oth parents will pay their own credit card debts owed." He prioritized his expenses and fell behind on his debts. He elected not to file bankruptcy because he wanted to take responsibility for his debts. (Answer; Tr. 2 at 24-31, 36-37, 39-42, 44-45, 52-54, 56, 66, 86-87, 105-107; AE C, D, E)

In September 2022, the court awarded Applicant full custody of his children from his first marriage due to his ex-spouse's medical issues, suspended his child-support obligation, and did not order her to pay him child support. She passed away in June 2023. Although he earned \$36 hourly at that time, he was the sole breadwinner for his family, as his spouse did not work outside of the home due to childcare costs and her medical issues. In approximately 2021, he disputed his delinquent debts through Credit Karma to determine their validity and contest those he believed belonged to his ex-spouse. He subsequently intended to take steps to try to resolve the debts that were determined to be his, but he was limited in his ability to do so because of his minimal income. (Answer; Tr. 2 at 24-31, 36-37, 39-42, 44-45, 52-54, 56, 66, 79, 82-83, 85-86, 88-97; AE C, D, E)

Between April 2018 and May 2021, six wage garnishment orders were issued to Applicant's employer concerning his debts, as further discussed below. He consequently believed that he was resolving his debts through wage garnishment, and he was unaware he could contact the creditors directly to resolve his debts in spite of the wage garnishment orders. He stated, "I thought once the Court order was in place, that's what it was." He believed his only option was to file a modification of wage execution, which he did, as further discussed below. (Answer; Tr. 2 at 24-31, 36-37, 39-42, 44-45, 52-54, 56, 66, 79, 82-83, 85-86, 88-97; GE 5-12; AE A)

SOR ¶ 1.a is an auto loan in collection for \$8,803. Applicant co-signed this loan with his ex-spouse during their marriage so that she could purchase a car. He felt that he did not have to pay this debt since their divorce decree stated that she was responsible for her debts. He was unaware of the status of this debt and stated that the creditor had not contacted him seeking payment. This debt is reported on the 2021 credit bureau report. He did not provide documentation to show that he paid or otherwise resolved it. (Tr. 2 at 30-31, 42-43; GE 3; AE C)

SOR ¶ 1.b is a credit card in collection for \$2,637. Applicant obtained this credit card in approximately 2015, and he used it for daily living expenses. This debt is reported on both the 2021 and 2022 credit bureau reports, and the latter credit bureau report reflects an outstanding balance of \$2,425. He stated that this debt underlies the judgment in SOR ¶ 1.p, as discussed below. (Tr. 2 at 29, 31-34, 43-47; GE 2, 3, 7, 8)

SOR ¶ 1.c is an account in collection for \$2,097. Although Applicant recalled having multiple accounts with the underlying creditor, he did not recognize this debt. This debt is reported on the 2021 and 2022 credit bureau reports. He stated that the creditor had not contacted him about this debt, and he believed it may be among the debts underlying the judgments in SOR ¶¶ 1.n and 1.o, as discussed below. This debt is with a different collection agency than that in SOR ¶¶ 1.d, 1.j, 1.l, 1.n, and 1.o, and Applicant did not provide documentation to corroborate his claim. (Tr. 2 at 47-48; GE 2, 3, 9, 12)

SOR ¶¶ 1.d, 1.j, and 1.l are three credit cards in collection for \$2,068; \$711; and \$481, respectively. These debts are reported on the 2021 credit bureau report. The 2022 credit bureau report also lists two debts in collection for \$708 and \$196, which appear to correspond to the debts in SOR ¶¶ 1.d, 1.j, and 1.l, as they are reported with the same

collection agency and underlying creditor. Applicant believed these debts underlie the judgments in SOR ¶¶ 1.n and 1.o, as discussed below. (Tr. 2 at 48-49; GE 3, 9, 12)

SOR ¶ 1.e is an account in collection for \$1,978. This debt is reported on the 2021 credit bureau report. Applicant believed this debt underlies the judgment in SOR ¶ 1.r, as discussed below. (Tr. 2 at 49, 63-65; GE 3, 6)

SOR ¶ 1.f is a home improvement store account in collection for \$1,435. Applicant opened this account in 2014. This debt is reported on the 2016 and 2021 credit bureau reports. Applicant believed this debt underlies the judgment in SOR ¶ 1.s, as discussed below. (Tr. 2 at 49-51, 65-66; GE 2-5)

SOR ¶ 1.g is an account in collection for \$1,124. This debt is reported on the 2021 and 2022 credit bureau reports. Applicant stated that when he disputed his delinquent debts, as previously discussed, this debt was subsequently not reported on his most recent credit bureau report from July 2023. He did not provide documentation of his dispute, and he acknowledged that he had not paid this debt. (Tr. 2 at 51-54; GE 2-3; AE F)

SOR ¶ 1.h is a store credit card in collection for \$1,004. Applicant stated that although this was a joint account, he believed it was his ex-spouse's responsibility. This debt is reported on the 2016, 2021, and 2022 credit bureau reports. Applicant stated that when he disputed his delinquent debts, as previously discussed, this debt was subsequently not reported on his 2023 credit bureau report. He did not provide documentation of his dispute, and he acknowledged that he had not paid this debt. (Tr. 2 at 37, 54-57; GE 2-3; AE F)

SOR ¶ 1.i is a credit card charged off for \$786. Applicant believed this debt also belonged to his ex-spouse. This debt is reported on the 2016, 2021 and 2022 credit bureau reports. Applicant stated that when he disputed his delinquent debts, as previously discussed, this debt was subsequently not reported on his 2023 credit bureau report. He did not provide documentation of his dispute, and he acknowledged that he had not paid this debt. (Tr. 2 at 37-39, 57-58; GE 2-3; AE F)

SOR ¶ 1.k is for a \$523 charged-off account. Applicant believed this debt also belonged to his ex-spouse. This debt is reported on the 2021 and 2022 credit bureau reports. Applicant stated that when he disputed his delinquent debts, as previously discussed, this debt was subsequently not reported on his 2023 credit bureau report. He did not provide documentation of his dispute, and he acknowledged that he had not paid this debt. (Tr. 2 at 58-59; GE 2-3; AE F)

SOR ¶ 1.m is an insurance account in collection for \$251. Although this debt was reported on the 2021 credit bureau report, the credit bureau reports from 2022 and 2023 reflect that this debt is paid. (Tr. 2 at 59-60; GE 2-3; AE F)

SOR ¶¶ 1.n and 1.o are judgments entered against Applicant by the same creditor in June 2017 and March 2018 for \$834 and \$3,170, respectively. Applicant believed that

the debts in SOR ¶¶ 1.d, 1.j, and 1.l underly these judgments. Court records reflect that an agreement for modification of wage execution was entered in March 2020 for the judgment in SOR ¶ 1.n, and another such agreement was entered in May 2020 for a retail consumer debt underlying the judgment in SOR ¶ 1.o, in which Applicant agreed for his employer to garnish \$42 weekly from his wages to satisfy these judgments. Applicant satisfied the judgment in SOR ¶ 1.o in October 2022. Applicant stated that the execution of the wage garnishment order for the judgment in SOR ¶ 1.n had not yet begun, as only one garnishment order could be executed at a time. (Tr. 2 at 34-35, 48-49, 60-63; GE 9, 12; AE A)

SOR ¶¶ 1.p and 1.q are judgments entered against Applicant by the same creditor in March 2018 for \$2,431 and \$1,832, respectively. Applicant believed that the debt in SOR ¶ 1.b underlies the judgment in SOR ¶ 1.p. Court records reflect that an agreement for modification of wage execution was entered in March 2020, in which Applicant agreed for his employer to garnish \$42 weekly from his wages to satisfy the judgment in SOR ¶ 1.p. Applicant stated that the execution of this wage garnishment order had just started. Court records also reflect that Applicant was ordered to pay \$35 weekly, beginning in April 2018, to satisfy the judgment in SOR ¶ 1.q. Court records and the 2022 credit bureau report reflect that Applicant satisfied the judgment in SOR ¶ 1.q in March 2021. (Tr. 2 at 33-34, 43-47, 63-65; GE 2, 7, 8)

SOR ¶ 1.r is a judgment entered against Applicant in October 2018 for \$1,601. Applicant believed that the debt in SOR ¶ 1.e underlies this judgment. Court records reflect that a wage execution order was issued in November 2018, requiring Applicant's employer to garnish \$35 weekly from Applicant's wages to satisfy this judgment. Applicant stated that the wage garnishment had not yet begun for this debt. (Tr. 2 at 33, 49, 63-65; GE 6)

SOR ¶ 1.s is a judgment entered against Applicant in February 2021 for \$1,205. Applicant believed that the debt in SOR ¶ 1.f underlies this judgment. Court records reflect that a wage execution order was issued in May 2021, requiring Applicant's employer to garnish \$35 weekly from Applicant's wages to satisfy this judgment. Applicant stated that the wage garnishment had not yet begun for this debt. (Tr. 2 at 33, 49-51, 65-66; GE 5)

While the 2022 credit bureau report reflects that Applicant's mortgage was past due in the amount of \$64,741 and that the foreclosure process had started, Applicant stated that he utilized the loan modification process to save his home from being foreclosed. He acknowledged that he had fallen several months behind on his mortgage. He stated that when he filed hardship paperwork with the mortgage company, it rejected his mortgage payment in January 2020. In December 2020, he and his family vacated the home while he was attempting to renovate it after the kitchen had been damaged by a fire and other issues that were discovered in the home needed to be addressed. In April 2021, he stated that the mortgage company sent a subcontractor to the home and vandalized it, "trying to say that we didn't live there anymore." When he reported it to the police, the police told him to leave the home. He intended to "let [the home] go," but he reached an agreement with the mortgage company through mediation. He stated that in addition to modifying his home loan, after which time his mortgage payment was \$1,533

monthly, HUD also made a payment on the loan of approximately \$40,000. He and his family lived in an apartment rental until November 2022, when they moved back into the home. (Tr. 2 at 67-77; GE 2)

The 2023 credit bureau report reflects a delinquent rental or leasing account in collection for \$1,115, noting that Applicant first became delinquent on this account in November 2022. Applicant stated that this debt was for early termination, cleanup, and damage fees at the apartment rental he lived in with his family from approximately 2020 to 2022. He stated that he was working with the creditor to try to resolve this debt. In June 2023, after paying an outstanding tax debt of \$393, he stated that he did not owe any other taxes. I will not consider these unalleged debts in evaluating the disqualifying conditions under this guideline; however, I will consider this information in my mitigation and whole-person analysis. (Tr. 2 at 77-70, 89, 100-101, 105-106; GE 2; AE F)

As of the date of the hearing and since around October 2020, Applicant's annual income was approximately \$60,000. His budget reflects a total monthly income of \$5,890, and a monthly net remainder, after expenses, of \$582. If approved for the home equity loan that he applied for in June 2023, he intended to use it "so I can just basically pay everything off and then just have one payment as a debt consolidation." With his ex-spouse's passing, he expects to receive survivor benefits for their two children. He intends to continue monitoring his credit report. He has not received credit counseling. He stated that he values his job, and he would not do anything to jeopardize it or his ability to provide for his family. (Tr. 2 at 24, 39-42, 66-77, 79-87, 89-108; GE 2; AE B, F)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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(a), 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."

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern 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 . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of not paying his debts. AG ¶¶ 19(c) and 19(c) are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

Circumstances beyond Applicant's control contributed to his financial problems. Nonetheless, under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. In light of the record evidence, I find the following: SOR ¶ 1.b is a duplicate of SOR ¶ 1.p; SOR ¶¶ 1.d, 1.j, and 1.l are duplicates of SOR ¶¶ 1.n and 1.o; SOR ¶ 1.e is a duplicate of SOR ¶ 1.r; and SOR ¶ 1.f is a duplicate of SOR ¶ 1.s. In addition, Applicant paid the debt in SOR ¶ 1.m. As such, I find SOR ¶¶ 1.b, 1.d, 1.e, 1.f, 1.j, 1.l, and 1.m in Applicant's favor.

Despite Applicant's position that he is not responsible for the debt in SOR ¶ 1.a because the divorce decree ordered that he and his ex-spouse were responsible for their own debts, he co-signed on this auto loan during his marriage so that his then-spouse could buy a car. This debt was reported on his 2021 credit bureau report, and he did not provide documentation to show that he paid or otherwise resolved it. This debt is unresolved. He also did not provide documentation to show that the debt in SOR ¶ 1.c, which is reported on both his 2021 and 2022 credit bureau reports, is among the debts underlying the judgments in SOR ¶¶ 1.n and 1.o. This debt is also unresolved. He also did not provide documentation to corroborate his claim that he disputed the debts in SOR ¶¶ 1.g, 1.h, 1.i, and 1.k. Since he acknowledged that he did not pay them and they were reported on his 2022 credit bureau report, these debts are also unresolved.

Applicant believed he was resolving his debts through wage garnishment when six garnishment orders were entered against him beginning in 2018 and through 2021. Through such orders, he paid the judgment in SOR ¶ 1.q in March 2021, before the SOR, and he paid the judgment in SOR ¶ 1.o in October 2022, and I therefore find these

allegations in Applicant's favor. However, the Appeal Board has long held that reliance on garnishment or other involuntary means of debt resolution does not equate to a good-faith repayment by the debtor. See, e.g., ISCR Case No. 08-06058 at 7 (App. Bd. Sep. 21, 2009). As of the date of the hearing, the wage garnishment for the judgment in SOR ¶ 1.p had just begun, and the execution of the wage garnishment orders for the judgments in SOR ¶¶ 1.n, 1.r, and 1.s were pending. He had not made efforts to contact the creditors directly to resolve these debts. These debts are also unresolved.

Applicant's 2023 credit bureau report, which reflects a delinquent rental or leasing account in collection for \$1,115, reflects that his financial problems are ongoing. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do 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 relevant 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not mitigated the financial considerations security concerns.

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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d-1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.s:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge