



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



In the matter of:)	
)	
)	ISCR Case No. 22-00762
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

12/29/2023

Decision

PRICE, Eric C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On January 17, 2020, Applicant submitted a security clearance application (SCA). On May 5, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD CAF acted 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 responded to the SOR (Answer) on May 12, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. On May 17, 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 June 23, 2023. The Government's exhibit list and pre-hearing disclosure letter, Applicant's exhibit list and request for extension to submit documents, and my email reopening the record from October 29, 2023, to November 6, 2023, and Applicant's acknowledgment of receipt are marked as Hearing Exhibits (HE) I through V.

Department Counsel offered six exhibits marked as Government Exhibits (GE) 1 through 6. Applicant testified and offered four exhibits marked as Applicant Exhibits (AE) A through D. The record was held open until July 27, 2023, to permit Applicant to submit documents. He timely submitted AE E through K. I reopened the record to permit Applicant to submit additional documents from October 29, 2023, to November 6, 2023, but he did not do so. I sustained Applicant's objection to GE 6 (summary report of his interview with a government investigator), and there were no other objections to the proffered exhibits. GE 1 through GE 5, and AE A through K are admitted in evidence. DOHA received the hearing transcript (Tr.) on July 7, 2023.

Findings of Fact

Applicant is a 43-year-old systems administrator employed by a defense contractor since October 2021. He has worked in various information technology (IT) positions for federal contractors since September 2007, except as follows: From March 2014 to November 2015, he worked several part-time jobs while he unsuccessfully attempted to open a small business; and he was unemployed from March 2017 to July 2017 and from August 2021 to October 2021. He has held a security clearance since 2009. (GE 1; Tr. 31-35, 57-62)

Applicant attended some college and has earned numerous IT certifications. He married in February 2022. He was previously married from November 2005 to April 2015. He has two children, ages 17 and 10, with his former spouse. (GE 1; Tr. 38, 59, 77-78)

The SOR alleges seven delinquent accounts totaling \$153,540, including a mortgage loan for \$124,265. (SOR ¶¶ 1.a through 1.h) In his Answer to the SOR, Applicant denied all SOR allegations with explanations.

In his January 2020 SCA, Applicant disclosed a 2016 mortgage foreclosure, and a delinquent auto loan and credit-card account totaling about \$25,000. (GE 1 at 35-39) In April 2021, an intelligence agency warned Applicant about security concerns raised by his financial problems and granted him a "conditional clearance" for access to certain intelligence information. (AE C) The agency concluded he provided evidence of good-faith efforts to resolve delinquent accounts that were later alleged in SOR ¶¶ 1.a and 1.c through 1.h, and that his financial issues were caused by circumstances beyond his control. (AE C) Applicant's eligibility for access to certain intelligence information was conditioned upon timely repayment of his debts and submission of evidence he resolved the debt later alleged in SOR ¶ 1.e; and a delinquent auto loan not alleged in the SOR. (AE C; GE 5 at 8) For reasons unclear from the record the debt alleged in SOR ¶ 1.b was not identified or otherwise addressed in the intelligence agency correspondence. (AE C)

Applicant attributes his financial problems to his divorce, his failed business venture, associated underemployment from March 2014 to November 2015, and unemployment. He said he attempted to file for bankruptcy, but his attorney never completed the process. After discussing his credit problems with a government investigator, Applicant started resolving some delinquent debts in 2020 with funds from an income tax refund. He said he was paying off his delinquent debts and stated his intention to restore his good credit. (GE 1 at 35-39, 41, GE 2 at 8; Tr. 24, 35-40, 49-52, 59-60)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: mortgage account placed for collection for \$124,265. Applicant denied the allegation, stated the mortgage account was closed in about February 2016 and removed from his credit report in 2022. (Answer) He testified that he accepted a payout from the creditor and moved out of the marital home after his 2015 divorce to resolve the delinquency. A March 2020 credit report shows the account was closed in December 2015 with no balance due, but credit reports from September 2021 and March 2022 erroneously show the account as in collection. He provided documentary evidence the mortgage account was closed in December 2015 with no balance due, correspondence from April 2022 confirming credit bureaus were provided corrected information, and credit reports from May 2023. (AE A-C, F; GE 1 at 36-37, GE 1-5; Tr. 24-28, 38-39, 44) This debt was resolved in December 2015.

SOR ¶ 1.b: credit account charged off for \$17,544. Applicant denied the allegation, said the account was no longer delinquent and that payment arrangements were made on January 8, 2022. (Answer) Credit reports from March 2020 and September 2021 show a July 2015 balance date and balance of \$17,544, and that the account was charged off for \$17,544. (GE 4 at 2, GE 5 at 5) In December 2021, Applicant acknowledged the debt was unpaid, reported entering a payment agreement and making monthly payments of \$100, and acknowledged he had not submitted documentary evidence of payment status or proof of payments. (GE 2 at 3-4, 9)

He testified this debt was for a line of credit or loan he obtained to start a small business in about 2014, that he probably stopped making payments at about the time of his divorce, and that the account had been charged-off. He said after this debt came up during an interview with a government investigator he decided "I need to address this. So I did work out at the time with them a payment, an auto-deduction from my account monthly of [\$100] They continue to make deductions from my bank account[.]" (Tr. 40-41) During the hearing, he acknowledged he had not provided evidence of payments, stated his understanding that bank statements showing payments to the creditor could provide such evidence, and stated his intent to keep making payments until the debt was paid. (Tr. 39-49, 51-53)

After the hearing, he submitted a letter dated February 26, 2022, showing an account balance of \$23,662, and that he authorized the creditor to debit his bank account for \$100 monthly from March to December 2022 to apply towards the debt. (AE G) In an

email dated July 26, 2023, he described the February 2022 letter as “showing my initial payment plan” and explained his difficulties communicating with the current creditor including lengthy wait periods on the phone, and multiple points of contact. He said, “they took payments out of my bank account up until December of 2022, and now nobody has any record of my account.” (AE E at 1-2) Credit reports from March 2022 and May 2023 do not list this account. He did not submit bank account records or other documentary evidence of payments made on this debt. (GE 2-5; AE A, E, G; Tr. 39-49, 51-53)

SOR ¶ 1.c: credit account charged off for \$7,999. Applicant denied the allegation and said he paid the account on February 24, 2021. (Answer) He acknowledged he had given his ex-spouse access to this credit-card account and said he settled the account. He said he had correspondence showing the creditor’s willingness to settle the account for about \$6,000 and bank records showing he had paid that amount in February 2021, but he did not submit that documentary evidence. (Tr. 36, 48-51) A March 2020 credit report shows the account was charged off for \$7,999 in June 2015, and in collection for \$7,999. (GE 5 at 6) A September 2021 credit report shows a balance of \$7,999 but indicates the account was “settled for less than full balance” and “paid charge off.” (GE 4 at 2-3) I resolve this allegation for Applicant because his September 2021 credit report and AE C corroborate his claim that he settled this debt in 2021.

SOR ¶ 1.d: credit collection account for \$1,430. Applicant denied the allegation and said he paid the account on March 22, 2021. (Answer) A March 2020 credit report shows the account with activity in August 2014 and in collection for \$1,430. (GE 5 at 6) Credit reports from September 2021, March 2022, and May 2023 do not reflect this account. He testified he paid the debt in full in March 2021 and said he had proof of payment. After the hearing, he submitted evidence including bank records that he paid the debt in full on July 11, 2023. (Tr. 54-55; AE H)

SOR ¶ 1.e: credit account charged off for \$1,082. Applicant denied the allegation and said he paid the account on March 17, 2021. (Answer) A March 2020 credit report showed the account as charged off for \$1,082 in February 2015, and as in collection for \$931. (GE 5 at 6) In December 2021 and at the hearing, Applicant said he had paid the debt. (GE 2 at 4; Tr. 28, 55) After the hearing, he submitted bank records showing he paid the creditor \$931 on March 17, 2021. (AE I)

SOR ¶ 1.f: credit account charged off for \$911. Applicant denied the allegation and said he paid a collection agency on March 17, 2021. (Answer) A March 2020 credit report shows the account as assigned in April 2010, charged off for \$911 in February 2015, and in collection for \$911. (GE 5 at 7) In December 2021 and at the hearing, he said he had paid the debt but did not provide evidence of payment. (GE 2 at 4; Tr. 55-56) After the hearing, he asserted this debt was transferred to another creditor, that the creditor acknowledged the account was resolved, but that he had not yet received promised proof of payment from the creditor, and that his online account was no longer accessible. (AE E) He submitted a bank record showing payment of \$501 to that creditor on March 17, 2021, which referenced the original creditor. (AE J) I find for Applicant on

this allegation because his claims that he paid the debt are corroborated in part by AE C and AE J.

SOR ¶ 1.g: credit collection account for \$309. Applicant denied the allegation and said he paid the account on January 15, 2021. (Answer) A March 2020 credit report showed the account as assigned in March 2015, and as in collection for \$309. (GE 5 at 7) In December 2021 and at the hearing, he said he had paid the debt but did not provide evidence of payment. (GE 2 at 5; Tr. 55-56) After the hearing, he submitted documentary evidence including a bank statement showing that he paid the debt in June 2023. (AE K)

Applicant's financial situation has improved. His gross annual income increased from about \$99,000 in 2018 to about \$110,000. In April 2022, he obtained a \$373,000 mortgage loan and has made timely payments since. In January 2023, he purchased a 2021 model-year vehicle and has made regular payments since. He said he has about \$1,500 in the bank, and \$26,000 in a retirement account. (AE A, Tr. 23-28, 66, 72-76)

Applicant has not received formal financial counseling. He provided a written budget in December 2021 and reported a remainder of about \$1,900 a month after expenses. He said he had a more comprehensive financial statement and acknowledged his understanding that submission of that document could be helpful but did not do so. (GE 2 at 9; Tr. 56-57, 76-77)

During the hearing Applicant was informed of the importance of providing documentary evidence of debt payments, contact with creditors, and efforts to address or resolve his delinquent debts. (GE 2 at 9; Tr. 42-46, 55-57, 62-66, 70-72, 76-78, 84)

Applicant submitted letters of recommendation from his current supervisor, a former co-worker and friend, and his former spouse that comment favorably on his judgment, reliability, trustworthiness, performance, expertise, security awareness, and loyalty. (AE D)

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).

The record evidence, including credit reports and Applicant's statements, establishes 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 under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of financial problems dating back to at least 2014. The SOR alleges seven delinquent accounts totaling \$153,540. In December 2015, he resolved the largest SOR debt, a delinquent mortgage totaling about \$124,265. (SOR ¶ 1.a). In February and March 2021, he resolved three debts totaling \$9,992, (SOR ¶¶ 1.c, 1.e, 1.f). In June and July 2023, he resolved two debts totaling \$1,739 (SOR ¶¶ 1.d, 1.g). Applicant has not resolved the debt alleged in SOR ¶ 1.b, charged-off for \$17,544 and with a balance of \$23,662 as of February 26, 2022.

AG ¶ 20(a) is not fully established. Applicant's financial circumstances have significantly improved. However, his financial problems are longstanding, and he took no action to resolve six of seven debts alleged in the SOR until after submitting an SCA in January 2020 and discussing his financial problems with a government investigator. Most significantly, his failure to address a \$17,544 debt (SOR ¶ 1.b) from at least July 2015 until February 2022, and his varying and uncorroborated claims of payments on that debt since December 2021 cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's divorce and associated marital debt, failed business venture, underemployment, and unemployment were largely beyond his control. However, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶¶ 20(c) is not established because he has not received financial counseling.

AG ¶ 20(d) is not fully established. Applicant engaged in a good-faith effort to resolve his delinquent mortgage in December 2015 (SOR ¶ 1.b). Although he subsequently resolved five of the six remaining SOR debts, he did so only after submitting a SCA in January 2020 and after discussing his financial issues with a government investigator. The timing of an Applicant's actions, including repayment of delinquent debts, impacts upon the degree to which the mitigating factors apply. ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). Waiting to pay legitimate debts until forced to do so by the security clearance process does not constitute good-faith debt resolution. See ISCR Case No. 10-05909 at 3 (App. Bd. Sep. 27, 2012).

Additionally, he provided insufficient evidence to support a conclusion that he has initiated or is adhering to a good-faith effort to repay the creditor alleged in SOR ¶ 1.b. He failed to address this \$17,544 delinquent debt from at least July 2015 until February 2022. After responding to questions from the DOD CAF about this debt in December 2021, he entered an agreement with the creditor to make monthly payments of \$100 from March to December 2022 on the debt then totaling \$23,662. In December 2021 and during his hearing he said he had made and would continue to make required monthly payments but provided no documentary evidence of a single payment. That this debt has dropped off recent credit reports is not meaningful evidence of debt resolution. See ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

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 work history, security clearance history, and that his financial problems were caused, in part, by circumstances beyond his control. I also considered his favorable character evidence, improved financial circumstances, and that he has paid most of his delinquent debts.

However, after weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a longer track record of financial responsibility, he may be able to demonstrate persuasive evidence of his security clearance worthiness.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c-1.g:	For Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Eric C. Price
Administrative Judge