



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



In the matter of:

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ISCR Case No. 23-00475

Applicant for Security Clearance

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro Se*

09/28/2023

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant recently initiated some debt-resolution efforts; however, he has not established a track record of financial responsibility. He did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 10, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The CAS acted 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 implemented by the DOD on June 8, 2017.

In Applicant's May 16, 2023 response to the SOR, he admitted, without explanation, all 12 alleged delinquent debts. He did not attach any documentary evidence to his response. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On June 20, 2023, Department Counsel was ready to proceed to hearing. I was assigned this case on June 28, 2023. On July 19, 2023, DOHA issued a Notice of Hearing, scheduling a hearing by video teleconferencing for August 10, 2023. The hearing proceeded as scheduled. Department Counsel proffered four exhibits, which I admitted as Government Exhibits (GE) 1 through 4 without objection. Applicant testified and submitted two exhibits, which I admitted as Applicant Exhibits (AE) A and B without objection. At Applicant's request, I left the record open until September 11, 2023, to provide him the opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on August 21, 2023. On September 2, 2023, Applicant timely provided nine post-hearing exhibits, which I admitted as AE C1 through C9 without objection. The record closed on September 11, 2023.

Findings of Fact

Applicant is 40 years old. He graduated from high school in June 2001. He attended some college courses between June 2013 and June 2018, but he did not complete a degree. From February 2004 to April 2014, Applicant served on active duty in the U.S. Army, from which he was honorably discharged. From April 2014 to April 2016, he served in the Army National Guard, from which he was honorably discharged. Applicant served on two combat deployments in Iraq. He married in February 2008, separated in December 2016, and divorced in April 2018. He married his second wife in February 2023. Applicant has a 13-year-old son from his first marriage, and he adopted his second wife's daughter, now age 21, in September 2021. (GE 1; Tr. 29-34; AE C9)

After his discharge from the U.S. Army in April 2014, Applicant was employed full time as a senior systems engineer for a DOD contractor until October 2018. Since October 2018, he has been employed full time as a senior systems engineer at the same U.S. Army facility for a different DOD contractor. In 2014, his starting annual salary was approximately \$58,000. His current annual salary is approximately \$72,000. (GE 1; Tr. 36-37)

On December 16, 2021, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 26 (Delinquency Involving Routine Accounts), he reported a delinquent mortgage account from 2017, which he resolved in 2018. He listed no other delinquent accounts. (GE 1)

On November 11, 2022, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). He explained that he separated from his wife in 2017. While separated, Applicant paid his estranged wife \$1,300 in monthly spousal support and \$1,000 in monthly child support. At the time, his monthly income was approximately \$3,200. When the divorce was finalized in 2018, Applicant assumed all of the marital debt. During the interview, Applicant admitted the 12 debts, and he stated that he was not engaged in any payment arrangements or making payments at that time. He further admitted that, while generally aware of his delinquent accounts, he had not obtained a copy of his credit report and "essentially [had] ignored any outreach attempts by any credit agency, debt collector or consumer credit agency representing a

past due account." He explained that he was prioritizing his current monthly financial obligations, including spousal and child support, and was unable to make payments on his delinquent accounts. He estimated that his monthly discretionary income - after deducting his monthly expenses from his monthly income - was approximately \$300. (GE 2; AE C8; Tr. 32)

SOR ¶ 1.a. This credit-card account was opened in September 2015, became delinquent in about February 2018, and was charged off in the approximate amount of \$8,814. Applicant admitted that this account became delinquent after he separated from his wife. He did not initiate any contacts with this creditor or make any debt-resolution efforts until he enrolled in a debt-resolution program (DRP) in May 2023. The DRP negotiated a monthly payment with this creditor, and Applicant is currently making monthly payments on this account. (GE 3 at 2; GE 4 at 5; Tr. 43-46)

SOR ¶ 1.b. This credit-card account became delinquent in September 2017 and was placed for collection in about June 2018 in the approximate amount of \$7,033. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 3; GE 4 at 5; Tr. 49-51)

SOR ¶ 1.c. This credit-card account was opened in February 2014, became delinquent in July 2017, and was charged off in the approximate amount of \$6,208. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 3; GE 4 at 8; Tr. 52-53)

SOR ¶ 1.d. This credit-card account was opened in March 2016, became delinquent in July 2017, and is past due in the approximate amount of \$5,102. On August 17, 2023, Applicant paid this debt in full. This debt is resolved. (GE 3 at 3; GE 4 at 10; AE C1; Tr. 39, 42, 53-54, 88)

SOR ¶ 1.e. This credit-card account was placed for collection in October 2017 in the approximate amount of \$4,377. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 4; GE 4 at 8; Tr. 55)

SOR ¶ 1.f. This credit-card account was placed for collection in November 2017 in the approximate amount of \$4,268. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 4; GE 4 at 6; Tr. 56)

SOR ¶ 1.g. This credit-card account was opened in December 2014, became delinquent in September 2017, and was charged off in the approximate amount of \$3,341. Applicant had no contact with the creditor between 2017 and at least May 2023. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement

or of any payments since the account became delinquent. (GE 3 at 4; GE 4 at 7; Tr. 56-57)

SOR ¶ 1.h. This credit-card account was placed for collection in April 2018 in the approximate amount of \$3,260. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 4; GE 4 at 4; Tr. 57)

SOR ¶ 1.i. This credit-card account became delinquent in June 2017 and is past due in the approximate amount of \$2,373. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 5; GE 4 at 9; Tr. 58-59)

SOR ¶ 1.j. This credit-card account was placed for collection February 2018 in the approximate amount of \$1,157. This account is enrolled in the DRP; however, there is no evidence of a payment arrangement or of any payments since the account became delinquent. (GE 3 at 5; GE 4 at 4; Tr. 59)

SOR ¶ 1.k. This credit-card account was opened in October 2011, became delinquent in December 2017, and was charged off in the approximate amount of \$567. On or about August 21, 2023, Applicant satisfied this debt; however, there is no evidence as to how much he paid. This debt is resolved. (GE 3 at 5; GE 4 at 4; AE C2; Tr. 39, 42, 60-61, 88)

SOR ¶ 1.l. This credit-card account became delinquent in September 2017 in the approximate amount of \$537. As of the hearing, this debt was enrolled in the DRP with a payment agreement in place; however, there is no evidence of any payments between 2017 and mid-2023. (GE 3 at 6; GE 4 at 5; Tr. 61-62; AE B)

In May 2023, Applicant enrolled ten debts (SOR ¶¶ 1.a.-1.c., 1.e.-1.j., and 1.l.) in the DRP. As of the hearing, payment agreements had been negotiated on two accounts (SOR ¶¶ 1.a. and 1.l.). Between May 2023 and September 2023, Applicant made monthly payments of approximately \$708 to the DRP. These funds pay for a program fee (\$10 a month) and are accumulated in an account to be paid towards settlements negotiated by the DRP. The DRP negotiates settlements and educates Applicant on contacting creditors; however, the program does not provide credit counseling or advice about budgeting. A few days before the hearing, Applicant learned that two accounts (SOR ¶¶ 1.d. and 1.k.) could not be included in the DRP, so he paid those debts on his own. (AE B; AE C6; AE C7; Tr. 43-48, 77-78, 88)

Although Applicant and his then wife separated in December 2016, they continued to reside together until mid-2017. Then she and their child moved out of the marital residence, and she sought spousal and child support. Beginning in mid-2017, Applicant paid monthly approximately \$1,300 in spousal support and \$1,000 in child support. Upon the finalization of the divorce, he was required to pay monthly about \$1,000 or \$1,100 in spousal support and \$700 in child support. Sometime in 2022, the spousal support

terminated because Applicant's ex-wife remarried. Applicant continues to pay \$700 in monthly child support plus \$150 a month for his child's health insurance. (Tr. 33, 40, 70-74)

Applicant did not address his delinquent accounts prior to May 2023 because he was focused on maintaining his mortgage and other monthly financial obligations. He refinanced his mortgage in about 2019, and he brought and kept current a credit-card account that had been past due during his marital separation. To corroborate his claim that he has responsibly managed his monthly financial obligations since 2019, he provided an account history showing him in good standing on his mortgage loan and one credit-card account. Without providing corroborated documents, he claimed that he paid more than the minimum payment on the credit-card account. In about January and February 2023, he researched debt-resolution programs. During a consultation with his DRP in May 2023, he learned that his strategy of addressing only one account at a time was not advised. (Tr. 38-39, 79-85)

Applicant did not provide a monthly budget outlining his income and expenses. However, as of the hearing, he estimated that he had approximately \$22,000 in retirement savings, and about \$400 remaining from each paycheck after expenses. It was unclear whether the calculated remainder included his DRP payments. (Tr. 68, 75)

Applicant presented evidence of several awards he earned during his military service, including an Iraq Campaign medal, five Army Commendation medals, eight Army Achievement medals, and a Meritorious Unit medal. As an employee of a DOD contractor, he was recognized as a subject-matter expert and praised for his experience, tenacity, and technical knowledge. Applicant's ex-wife submitted a letter of recommendation attesting to Applicant's perseverance and integrity. (AE C9)

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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 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* EO 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's 12 accounts, totaling approximately \$46,529, became delinquent between July 2017 and April 2018. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

(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 has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in [*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)], *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b). (ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013))

Critical in Applicant's case is the timing of his debt-resolution efforts. The DOHA Appeal Board, in ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017), addressed the importance of evaluating the timing of such efforts.:

The time of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests.

Applicant's debt-resolution efforts did not begin until May 2023. He paid two debts in August 2023, and he had started payments on two more accounts. There is no evidence of credit counseling. AG ¶¶ 20(a) and 20(c) do not apply.

Applicant assumed the marital debt upon his divorce, and he was required to pay significant spousal and child support. From mid-2017 to April 2018, his monthly support obligation totaled \$2,300. From April 2018 to 2022, his monthly support obligation totaled \$1,700. Since 2022, his monthly obligation totaled \$850 for child support and health insurance. Applicant established the first prong of AG ¶ 20(b).

To establish the second prong of AG ¶ 20(b), Applicant bears the burdens of production and persuasion in mitigation, and must demonstrate that he acted responsibly to address and resolve his delinquent accounts. Applicant did not provide a monthly budget or other evidence sufficient to meet his burden to establish that he was financially incapable of addressing his delinquent accounts given his spousal and child support obligations. Although his spousal support obligation ended in 2022, he did not begin making \$708 monthly payments with the DRP until May 2023. Although he researched debt-resolution companies in about January and February 2023, he did not contact his creditors, make payments or payment arrangements, or enroll in a DRP until after the issuance of the SOR. Notwithstanding the significant financial hardship Applicant faced following his divorce, he has not demonstrated that he acted responsibly to address his delinquent accounts, particularly after his spousal support obligation ended in 2022. AG ¶ 20(b) does not apply.

In August 2023, Applicant paid two accounts totaling approximately \$5,600. While these debt-resolution efforts reflect favorably on Applicant, such efforts are undermined by their timing and fall short of the good faith required under AG ¶ 20(d). It is premature to conclude that Applicant has established a track record of financial responsibility. He did not mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant served honorably in the U.S. Army and Army Reserve, including two combat deployments. He has earned awards and praise for his performance and character in his military and civilian careers. Applicant's financial problems were triggered by his marital separation. His ability to address his delinquent debts was reasonably impacted by his \$1,700 monthly support obligation. However, when that support obligation reduced to \$850 in 2022, he did not initiate any debt-resolution efforts until after the issuance of the SOR. Applicant has not demonstrated that he has acted financially responsibly to address his delinquent debts. He did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

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.l.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge