



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



In the matter of:)	
)	
)	ISCR Case No. 22-00885
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2024

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 March 24, 2020, Applicant submitted a security clearance application (SCA). On May 20, 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 27, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. On May 15, 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 13, 2023.

Department Counsel offered seven exhibits marked as Government Exhibits (GE) 1 through 7. Applicant testified but offered no documentary evidence. The record was held open until June 30, 2023, to permit Applicant to submit documents. He timely submitted four exhibits marked as Applicant Exhibits (AE) A through D. He requested that the record be held open until July 14, 2023, which I approved. He timely submitted three exhibits marked as AE E through G. There were no objections to the proffered exhibits. GE 1 through 7 and AE A through G are admitted in evidence. DOHA received the hearing transcript (Tr.) on June 27, 2023.

Findings of Fact

The SOR alleges eight delinquent accounts totaling \$27,181. (SOR ¶¶ 1.a through 1.h) In his Answer to the SOR, Applicant admitted all allegations without explanation.

Applicant is 36-years old and has been employed by a defense contractor since about September 2021. He served in the Army from June 2008 to about October 2020 and was honorably discharged as an E-6. He served as a missile operator and maintainer and deployed overseas for more than four years. He has held a security clearance since about 2008 without reported incident. (GE 1; Tr. 23-25, 59-62)

Applicant completed two years of college. He married in December 2008, separated from his then spouse in July 2015, and their divorce was finalized in April 2017. He has two children with his former spouse, ages 14 and 10. (GE 1; Tr. 23-24, 58-60)

Applicant attributes his financial problems to his divorce, child support, underemployment, and his former spouse's use of credit cards, issued in his name and intended for emergency use, which she used, without his knowledge, to pay for her apartment and furnishings. He contested debts his former spouse charged to his credit cards but the judge in the divorce proceedings ruled against him. He had also provided his former spouse with a General Power of Attorney. He did not disclose any financial problems, delinquent accounts, or judgments in his March 2020 SCA. He said that he is slowly paying off his debts and prioritized paying his smallest debts first. (Tr. 36-44, 56-65, 51, 85-88; GE 1 at 32-33, GE 7 at 8)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: credit account charged off for \$7,145. Credit reports dated from April 2020 to June 2023 show the credit card account was an individual account opened or assigned in March 2012, charged off for \$7,145 in December 2017, and with a past due balance of \$7,145. The June 2023 credit report states consumer disputes this account. In May 2020, Applicant told a government investigator this was his former spouse's credit card or a credit card they had for emergencies, that he had been trying to pay it off and

that he believed the balance had been reduced to about \$1,780. (GE 2 at 7, GE 3 at 2, GE 4 at 2, GE 5 at 18-19, GE 7 at 7)

Applicant testified that he called the creditor about a year before the hearing and was told the account had been charged off and that they had taken a loss. He asked if the debt had been sold to another creditor because he wanted to start paying it. He said he was told that it had not been sold but he did not receive anything else from the creditor. He did not report any unauthorized use of the card. After the hearing he submitted an email stating he had agreed to a settlement with the creditor and would resolve the debt within a year. He also submitted an undated letter from the creditor, the same creditor alleged in SOR ¶ 1.b, to “confirm the payment arrangements agreed upon in our recent telephone conversation. You have scheduled payments of \$298.00 to begin July 14, 2023[,] with subsequent payments scheduled for every 30 days.” (AE F) The letter did not specify an account number or type of debt. He did not submit evidence of any payment made under the arrangement. (Tr. 43-49, 63-73, 105-107; AE A, F)

SOR ¶ 1.b: credit account charged off for \$6,322. Credit reports dated from April 2020 to June 2023 show this individual secured credit account was opened or assigned in June 2016, charged off for \$6,322, and with a past due balance of \$6,322. In May 2020, Applicant told a government investigator this was a motorcycle loan he could not afford to pay after his divorce, that the motorcycle was repossessed and sold for more than he owed, and that the debt was resolved. (GE 2 at 7, GE 3 at 2, GE 4 at 2, GE 5 at 19, GE 7 at 8)

Applicant testified that he spoke with this creditor in late 2021 and was told the account had been charged off and that the motorcycle had not been sold. He said that “after [creditor] repossessed the motorcycle, I have never received, got a single notice about what was left over, the remaining balance of the motorcycle, if they sold the motorcycle. I didn’t receive any information from [creditor] about any of that.” (Tr. 73-74) After the hearing he submitted an undated letter from the creditor, the same creditor alleged in SOR ¶ 1.a, to “confirm the payment arrangements agreed upon in our recent telephone conversation. You have scheduled payments of \$298.00 to begin July 14, 2023[,] with subsequent payments scheduled for every 30 days.” (AE F) The letter did not specify an account number or type of debt. He did not submit evidence of any payment made under the arrangement. (Tr. 43-49, 72-74, 105-107; AE A, F)

SOR ¶¶ 1.c-1.d: student loan accounts in collection for \$4,028 and \$3,760. Credit reports from April 2020, September 2021, and January 2022 show these individual student loan accounts as assigned in March 2017, affected by a natural or declared disaster, and in collection for amounts varying from \$4,028 to \$4,279, and from \$3,760 to \$3,994, respectively. A June 2023 credit report shows the accounts with current balances of \$4,995 and \$4,663, no last payment date, and no payment due. Applicant told a government investigator these accounts were student loans and that he would address the debts after resolving higher priority debts. He testified that both loans were under his name but said that one was for his former spouse, that he had obtained the loans in about 2008, and that he made payments until about 2012 when he experienced some financial

difficulties and stopped making payments. He said the loans were deferred or in forbearance for about six months and that he had not made a payment on the loans since about 2014. He had not contacted the creditor from 2014 until about a week prior to the hearing when he started working with the creditor to consolidate the loans into a single loan of about \$8,000 or \$8,700. He did not submit documentary evidence of a loan consolidation agreement or of any payment made thereunder. (Tr. 33, 49-50, 77-85; GE 2 at 9, GE 3 at 2-3, GE 4 at 2-3, GE 5 at 20, GE 7 at 7)

SOR ¶ 1.e: credit collection account for \$1,580. Credit reports from April 2020, June 2021, January 2022, and June 2023 show this individual credit account was assigned in July 2017, and in collection for \$1,580. The June 2023 credit report reflected that he disputed the account information. In May 2020, Applicant told a government investigator he was unaware of this account and would investigate and attempt to resolve the debt after taking care of other debts. He testified that he had not communicated with the creditor from 2017 until about May 2023 and said that he planned to pay this debt. He said his former spouse used the credit card without his knowledge. After the hearing, he submitted evidence that he made a payment of \$500 on June 15, 2023, and said he would pay the debt off the next month. (Tr. 32, 50-52, 85-91; GE 2 at 7, GE 3 at 3, GE 4 at 3, GE 5 at 20, AE A, C)

SOR ¶ 1.f: credit account charged off for \$1,017. Credit reports from April 2020, June 2021, January 2022, and June 2023 show this individual credit card account was opened or assigned in May 2016, charged off for \$1,017, and with a past due balance of \$1,017. The June 2023 credit report notes that he disputed the account. In May 2020, Applicant told a government investigator he was unaware of this account and that he would investigate and attempt to resolve the debt after taking care of other debts. He testified that he had not communicated with the creditor from 2017 until May 2023 but was confused because he had multiple credit cards with this creditor and would have to contact them to determine account status. After the hearing, he submitted evidence he paid this debt on June 15, 2023. (Tr. 32-33, 53-54, 91-98; GE 2 at 5, GE 3 at 3, GE 4 at 3, GE 5 at 21; AE A, B)

SOR ¶ 1.g: credit account charged off for \$456. Credit reports from April 2020, June 2021, and January 2022 show this individual credit card account was assigned in August 2015, charged off for \$456 in June 2017, and with a balance of \$456. This account is not listed in a June 2023 credit report. In May 2020, Applicant told a government investigator he was unaware of this account and would investigate, and, if liable, would attempt to resolve it. He testified that he paid this debt in about December 2022, that it had been removed from his credit report, and that he could provide documentary evidence. He had multiple credit cards with this creditor and said he would have to contact the creditor to determine the account status. He did not submit documentary evidence the debt was paid. (Tr. 32, 53-54, 91-99; GE 3 at 3, GE 4 at 3, GE 5 at 21, GE 7 at 8)

SOR ¶ 1.h: past due child support in the approximate amount of \$2,873. An April 2020 credit report shows this account as in dispute, past due in the amount of \$7,742, and with a balance of \$7,771. A June 2021 credit report shows this account as

past due in the amount of \$4,280, and with a balance of \$5,190. A January 2022 credit report shows this account as past due in the amount of \$2,873, and with a balance of \$2,876. A June 2023 credit report shows this account as current since about March 2022, and with a balance of \$157. In September 2021, a state court amended an involuntary withholding order (IWO) because he was in arrears for more than 12 weeks. The amended IWO required him to pay \$1,060 per month in child support including \$160 to be applied towards arrearages. (GE 6) He testified that he regularly paid his child support obligations but said that he missed a payment when transitioning from the Army. He submitted documentary evidence of payments on this debt since May 2018 and that this debt was no longer past due. This allegation is resolved for Applicant. (Tr. 26-31, 36-43, 99-104, 113-115; GE 2 at 5, GE 3 at 3-4, GE 4 at 3-4, GE 5 at 3; AE D)

Applicant's financial circumstances have improved. In January 2023, the Department of Veterans Affairs (VA) determined that he was 100% disabled and he has received monthly disability payments of about \$3,400 since. His net pay from his job is about \$1,700 every two weeks after child support payments are withheld pursuant to an IWO. His monthly rent is about \$1,550 and his truck payment is \$600 per month. He has about \$780 in the bank and said he may have a 401K retirement account with his employer but was not sure. The only past due debts shown in a June 2023 credit report are accounts alleged in the SOR. (GE 2) (Tr. 25-34, 52, 63, 108-109; GE 6)

In May 2021, he financed the purchase of a 2020 model year pick-up truck with a \$41,909 loan. He has made monthly payments of \$600 since and had reduced the loan balance to \$32,616, as of June 1, 2023. In April 2023, he purchased a motorcycle with a \$25,998 loan. He characterized this as "a dumb . . . spur of the moment purchase." (Tr. 110) He said he had made one payment on the loan before the hearing but did not provide documentary evidence. (Tr. 33-35, 55-56, 74-77, 110; GE 2 at 7-8, GE 3 at 4, GE 4 at 5)

Applicant received financial counseling while in the Army in about 2020, and said he maintains an unwritten budget in his head. He does not gamble or take vacations. 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. (Tr. 54-57, 67-73, 98-102, 112-113)

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 Applicant's admissions establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions 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;
- (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 has a history of financial problems dating back to at least 2014. The SOR alleges eight delinquent accounts totaling \$27,181. Applicant resolved a delinquent credit card account totaling \$1,017 in June 2023, (SOR ¶ 1.f), and past due child support totaling about \$2,873 (SOR ¶ 1.h). In June 2023, he made a \$500 payment on a \$1,580 debt (SOR ¶ 1.e). He has not provided documentary evidence that he has resolved or is resolving the remaining debts alleged in the SOR.

AG ¶ 20(a) is not established. Applicant's financial problems are longstanding and ongoing. Although he has had financial problems since at least 2014, he took limited or no action to resolve seven of eight debts alleged in the SOR until after he received it. He purchased an expensive truck about a year after telling a background investigator that he intended to address his financial obligations and then about two-years later he purchased an expensive motorcycle. He has not shown that his financial problems are unlikely to

recur, and his financial behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's divorce and associated debt, and underemployment 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. Applicant received financial counseling from a legitimate and credible source, but he has not provided sufficient evidence that his financial problems are being resolved or are under control.

AG ¶ 20(d) is established for the delinquent child support debt alleged in SOR ¶ 1.h. It is not fully established for the debts alleged in SOR ¶¶ 1.a-1.g. 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).

Although Applicant entered into a payment agreement with the creditor alleged in SOR ¶¶ 1.a-1.b after the hearing, he has not provided sufficient evidence to identify which debt the agreement applied to or of payment under the agreement on either debt. He has made no payments on the student loans since 2014, and first contacted the creditor about loan consolidation a week before the hearing, SOR ¶¶ 1.c-1.d. With respect to the debts alleged in SOR ¶¶ 1.e-1.f, he did not communicate with the creditors from 2017 until May 2023, and made payments on both debts only after the hearing. Although I resolved the debt alleged in SOR ¶ 1.f in his favor because he paid it, his payment was after the hearing and does not warrant full mitigative credit. And he paid only about one-third of the delinquent debt alleged in SOR ¶ 1.e. He said he paid the debt alleged in SOR ¶ 1.g in December 2022, but did not provide documentary evidence of payment. That this debt has dropped off a recent credit report 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)).

AG ¶ 20(e) is not established. Applicant did not assert a reasonable basis to dispute the legitimacy of any delinquent debt alleged in the SOR or provide documented proof of his actions to resolve any disputes.

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 and military history, security clearance history, and that his financial problems were caused, in part, by circumstances beyond his control. I also considered his improved financial circumstances, and that he has paid some 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.e, 1.g:	Against Applicant
Subparagraphs 1.f, 1.h:	For 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