



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



In the matter of:)
)
) ISCR Case No. 23-01097
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro Se*

03/29/2024

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations. Eligibility is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on October 24, 2022, in connection with his employment by a defense contractor. On June 20, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD issued the SOR 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

On June 30, 2023, Applicant submitted an answer to the SOR (Answer) and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On August 17, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 6. On August 23, 2023, the FORM was mailed to Applicant. Applicant received the FORM on September 5, 2023. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted a response on September 28, 2023 (Response).. Government Items 1 and 2, the SOR and the Answer, respectively, are the pleadings in the case. Items 3 through 6 and the Response are admitted without objection. The case was assigned to me on January 4, 2024.

On February 21, 2024, without objection, I *sua sponte* reopened the record to allow the parties to submit additional exhibits by close of business March 8, 2024. The Government timely submitted a document marked Government (GE) 7 (3/7/2024 credit report), and Applicant timely submitted a document marked Applicant's Response to GE 7. Those documents were admitted without objection.

Findings of Fact

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact:

Applicant is 39 years old, never married, and has no children. He has one living sibling, a sister age 58. He is a high school graduate. Between August 2003 and August 2016, he attended three different periods of classes at one community college and one period of classes at a state college but did not obtain a degree. He has had a cohabitant since July 2021. Since September 2022, he has been employed full-time by a defense contractor. He reported a period of unemployment from January 2020 to September 2021, explained further below. He applied for his security clearance in October 2022. This is his first security clearance application. (Item 3.)

The SOR alleged that Applicant had approximately \$33,695 of debt from 17 consumer accounts. (Item 1.) He admitted those allegations and explained that most, but not all, of those delinquencies were caused by the death of both of his parents in 2019 and by COVID. In May 2019, his parents were diagnosed with terminal illnesses. The treatment made his mother very ill. That required him to take time off from work without pay to care for her and his father. She died in September 2019 at age 73. At the time, his father was also hospitalized, requiring him to take more time off work. His father died in November 2019 at age 76. (Items 2 and 3.)

Applicant needed to take time off work without pay to arrange for his parents' funerals. He had to handle his parents' estates. His father also owned several rental properties out of state in addition to some in his home state. Applicant had to extend his leave of absence to care for those properties until his father's estate could be settled. He

exhausted his Family and Medical Leave Act (FMLA) hours. He was on unemployment from January 2020 to September 2021, in part to deal with post-mortem issues. The costs of his parents' funerals, handling their estates, and his father's rental properties depleted what little savings he had. The record does not indicate that his older sister assisted him financially or otherwise with the post-mortem issues. (Item 2.)

When he was able to return to work in September 2021, he found that COVID had caused his position to be eliminated. He had no job to return to. He was forced to take a much lower paying hourly job from September 2021 to July 2022. It took care of his living expenses but left very little to put toward his debts or savings. In August 2022, he took part-time employment until October 2022. In September 2022, he began his current job, a full-time high paying salaried job. But no income or low income in the past caused him to default on some of the SOR accounts. (Item 2.)

It appears that Applicant's period of no income began sometime after his parents' illnesses in May 2019 and their deaths in September and November 2019. That resulted in his unemployment in January 2020 until his return to work in a low-paying hourly job in September 2021. In September 2022, he resumed a higher paying salaried job. (Item 2.)

SOR 1.a was charged off for \$892 in 2017. (Item 5 at 4; Item 6 at 5.) Applicant stated in his SCA that he began having financial trouble with this credit card in 2016, and that it closed without being paid. (Item 3 at 7.) In his personal subject interview (PSI), he verified his SCA information. (Item 4 at 2.) His Response said the account was removed from his credit report as of September 15, 2023. (Response at 3.) This account is not reported on GE 7.

SOR ¶1.b was placed for collection for \$702 in 2021. (Item 5 at 4; Item 6 at 5.) Applicant stated in his SCA that he began having financial trouble with this credit card in July 2021, and that it closed without being paid. (Item 45-46.) In his PSI, he verified his SCA information. (Item 4 at 3.) In his Response, he said that he defaulted on this account, after he lost his income in 2020. He also said he settled this account with a discounted payment of \$282 on September 21, 2023, and attached a receipt. (Response at 3, 11.) This SOR debt has been resolved.

SOR ¶1.c was placed for collection for \$876 in 2019. (Item 5 at 5; Item 6 at 5.) Applicant stated in his SCA that he began having financial issues with this credit card in 2019. (Item 5 at 5; Item 6 at 5.) In his Answer, he stated that he defaulted on this account, after he lost his income in 2020. His Response said the account was removed from his credit report on September 15, 2023. (Response at 3.)

GE 7 reports on an account Applicant opened on December 17, 2023, with the same creditor identified in SOR ¶1.b and 1.c. GE 7 reports this new account "Pays As Agreed" and has zero balance "Past Due." GE 7 reports no accounts with this creditor as being delinquent. GE 7 corroborates Applicant's Response. The record indicates that this SOR debt is not delinquent.

SOR ¶¶ 1.d, 1.e, and 1.f are with the same creditor.

SOR ¶1.d is the balance (\$6,554) of an auto loan ended in repossession in 2021. (Item 5 at 5); (Item 6 at 8.) Applicant stated in his SCA that his financial issues with this vehicle began in 2019 when he had to take leave to care for his parents. (Item 3 at 42-43.) In his Answer, he said that he was current for several years before his parents died. His loss of income in 2020 after their death forced him to surrender the auto to the creditor. In his Response, he said he contacted the creditor on September 1, 2023, and was told it could not accept any payments and referred him to the collection agency. He contacted that agency on several occasions and left messages. It has not returned his calls.

SOR ¶1.e is the balance (\$2,012) of an auto loan that was repossessed in 2019. (Item 5 at 5; Item 6 at 8.) In his Answer, Applicant said he was making payments for several years and was current until his parents died. When he lost his income in 2020, he was forced to surrender the auto to the creditor. In his Response, he said he contacted the creditor on September 1, 2023, and was told it could not accept any payments and referred him to the collection agency. He contacted that agency on several occasions and left phone messages. It has not returned his calls.

As noted, the two above auto debts are owed to the same creditor. GE 7 reports the auto loans *twice*. First, they are *both* reported as: “Auto Repossessions,” “Opened” June 2015 and June 2016, and zero “Past Due.” They have identical account numbers. (GE 7 at 5-6.) Second, in the same credit report, two auto loans are reported as: “Auto,” “Opened” July 2015, “Pays account as agreed,” “Closed Or Paid Account/zero Balance,” and zero “Past Due.” These two latter accounts have the same account numbers as the first two SOR auto accounts discussed above. (GE 7 at 10.) The record indicates that SOR ¶¶ 1.d and 1.e are not delinquent.

SOR ¶ 1.f was charged off for \$11,726 in 2021. (Item 5 at 6; Item 6 at 3.) In his Answer, Applicant said this was a joint line of credit with his mother. After she died, it defaulted and became a claim against her estate. In his Response, he said he contacted the creditor on September 1, 2023, and was told it could not accept any payments and referred him to the collection agency. He contacted it on several occasions and left phone messages. It has not returned his calls.

In his Response to GE 7, Applicant reported his additional attempted contacts with the collection agency for SOR ¶¶ 1.d, 1.e, and 1.f. He contacted it by phone on September 22, 25, and 29, 2023, on October 1, 2023, on December 11, 2023, and on March 7, 2024. He got only prompts to leave messages, which he did. He has not received any return calls. He also contacted an accredited debt relief company but was told it could not assist him. He would very much like to settle these three accounts and will continue to contact the collection agency and seek help from other third-party companies.

SOR ¶ 1.g was charged off in 2016. The record shows zero balance and zero past due. (Item 5 at 6; Item 6 at 6.) Although Applicant admitted this allegation, the SOR does

not allege an amount owed or that the account is delinquent. The Government has not established its case.

SOR ¶ 1.h was charged off in 2017. The record shows zero balance and zero past due. (Item 5 at 7; Item 6 at 7.) Although Applicant admitted this allegation, the SOR does not allege an amount owed or that the account is delinquent. The Government has not established its case.

SOR ¶ 1.i was placed for collection for \$3,320 in 2019. (Item 6 at 4.) In his Answer, Applicant said this was his mother's credit card, and he was an authorized user. After she died, the account defaulted and was claimed against her estate. In his SCA, he said he began having financial issues with this account in June 2019, due to caring for his parents. (Item 3 at 40.) In his Response, he said he contacted the reporting agencies and disputed this account. He was told they would remove this account, and that it was removed from his credit report as of September 15, 2023. This account is not reported on GE 7.

SOR ¶ 1.j was charged off for \$2,952 in 2022. (Item 6 at 4.) In his SCA, Applicant stated that this account became delinquent in July 2022 due to a job relocation. ((Item 3 at 49-50.) In his Answer, he said he tried to make payments but was not making enough money at the time. This account is not reported on GE 7.

SOR ¶ 1.k was charged off for \$1,806 in 2021. (Item 6 at 4.) In his SCA, Applicant said he began having issues with this account in November 2019 after caring for his parents. (Item 3 at 43.) This account is not reported on GE 7.

SOR ¶ 1.l was a medical account placed for collection for \$1,290 in 2022. (Item 6 at 4.) In his Answer, Applicant stated this account was for an emergency room visit in 2020, when he was unemployed and had no insurance. In his Response, he said he contacted the collection agency on September 25, 2023, to settle the account but was told it could no longer accept payment. It promised to send a notice to its credit department to remove the account from his report. This account is not reported on GE 7.

SOR ¶ 1.m was charged off for \$579 in 2016. (Item 6 at 5.) In his SCA, Applicant stated he began having financial issues with this account in October 2016. In his Response, he stated that this account has been removed from his credit report as of September 15, 2023. This account is not reported on GE 7.

SOR ¶ 1.n was charged off for \$187 in 2022. (Item 6 at 6.) In his Answer, Applicant stated that he defaulted during his period of unemployment. In his Response, he stated that this account has been removed from his credit report as of September 15, 2023. GE 7 reports an account with this same creditor opened in August 2020, "Pays account as agreed," no delinquency, and zero "Past Due."

SOR ¶ 1.o was a medical account placed for collection for \$162 in 2022. (Item 6 at 6.) In his Answer, Applicant said he defaulted on this account during his period of

unemployment. In his Response, he stated that this account has been removed from his credit report as of September 15, 2023. This account is not reported on GE 7.

SOR ¶ 1.p was a medical account placed for collection for \$116 in 2020. (Item 6 at 6.) In his Answer, he stated that this was an account from when he had COVID and was unemployed and uninsured. In his Response, he stated that this account has been removed from his credit report as of September 15, 2023. This account is not reported on GE 7.

SOR ¶ 1.q was reported past due for \$584 in November 2022. (Item 6 at 9.) In his Answer, he stated he got behind in payments due to low income. In his Response, he stated that this account has been removed from his credit report as of September 15, 2023. This account is not reported on GE 7.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available and 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F - Financial Considerations

The security concern relating to Guideline F 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.

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

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

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

Except for SOR ¶¶ 1.g and 1.h., the SOR debts are established by Applicant's admissions and the Government's credit reports. Therefore, AG ¶¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the 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), . . . divorce or separation), and the individual acted responsibly under the circumstances); and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

I have considered mitigating condition AG ¶ 20(a). The circumstances that gave rise to Applicant's financial difficulties began with the simultaneous diagnoses of the terminal illnesses of both of his aging parents in May 2019. Those diagnoses caused Applicant to take time off from work without pay to care for them. That caregiver role ended in the fall, when his mother and father died in September and November 2019, respectively. Given that their fatal diagnoses were in May and their deaths only several months apart that same year, it is fair to infer that their deaths were unexpected.

Applicant's post-mortem tasks, however, continued to absorb his time. He had to arrange for all the details that normally come from the death of a parent. In this case, however, with back-to-back deaths, those funeral details likely were more onerous. Having taken more time off from work without pay and exhausted his FMLA leave, by January 2020, he needed to apply for unemployment. That was occasioned by his need to take care of his parents' estates. Another complication was that his father owned several rental properties, some out of state and some in his home state. Those properties needed to be attended to because of his father's death.

Dealing with two funerals, two estates, and a number of rental properties did not just consume much of Applicant's time and employability. It also had adverse financial repercussions. Two funerals, two estates, and numerous rental properties caused unexpected costs that depleted what little savings he had. He contracted COVID sometime in 2020. When he was able to return to work in September 2021, he found that his position had been eliminated by COVID. He had no job to return to. From September 2021 to July 2022, he was forced to take a much lower-paying hourly job, one that took care of living expenses but left very little to put towards debts or savings. Having no income or low income in the past caused him to fall behind on some of the SOR debts. After a brief stint in a part-time job from August 2022 to September 2022, he returned to a full-time higher paying salaried job.

In sum, Applicant's period of no income began not long after his parents' illnesses in May 2019 and their deaths in the fall of 2019. That continued into early 2020. His period of unemployment, thus no income or low income, began in January 2020 until he took a low-paying hourly job in September 2021. It was not until September 2022 that he resumed a full-time higher paying salaried job. Just a month later, in October 2022 he completed his SCA, thus beginning his security clearance process.

I have considered mitigating condition AG ¶ 20(a). An unexpected double death of aging parents, the concomitant two funerals and two estates, paternally-owned rental properties, related unemployment, a pandemic-caused job loss, and underemployment are circumstances highly unlikely to recur. Those circumstances bore directly and adversely on Applicant's financial condition. Applicant's "current reliability" is addressed below in the discussion of his responsible conduct under AG ¶ 20(b). I find that his current reliability is not at all doubtful.

Applicant's time away from work was initially caused by his parents' diagnoses with terminal illness in May 2019. He did not resume a full-time salaried position until September 2022. Between those two dates, the following SOR debts were charged off, placed for collection, or in default due to: (1) unemployment; (2) loss of income; (3) low income; (4) a claim against an estate; (5) the non-responsiveness of a collection agency or its refusal to accept payments; or (6) the account was current before his parents died:

SOR ¶¶ 1.b, through 1.l and 1.n, through 1.q. debts are mitigated under AG ¶ 20(a).

Mitigating condition AG ¶ 20(b) warrants discussion. That condition has two requirements. First, the circumstances causing Applicant's financial problems must have been "largely beyond" his control. Second, he must have acted responsibly in light of the obstacles he faced. Here, the circumstances he confronted were without a doubt beyond his control, thus satisfying the first requirement.

The next question is whether Applicant acted responsibly (and reliably) under the adversity he faced. Looking at the multi-faceted burdens of the illness and deaths of both parents, he took the time necessary to address those burdens. He took time off work without pay. He went on unemployment. Then came COVID, a lost job position, and a year of underemployment. He resumed salaried employment in September 2022, just a month before he started his security clearance process. He did not have a great deal of time to get his finances in order. So, it was inevitable that much of his financial remedial efforts came after the SOR was issued. The foregoing debt-by-debt analysis shows that he made numerous attempts to contact creditors and collection agencies to satisfy SOR debts. I do not find that he was "gaming" the security clearance process. This was, in fact, his first foray into that process. I find that he acted responsibly (and reliably) and that AG ¶ 20(b) applies to mitigate the same debts mitigated under AG ¶ 20(a).

Applicant produced a receipt showing he resolved SOR ¶ 1.b by paying a discounted amount on September 21, 2023. This debt is mitigated under AG 20 ¶ (d).

A careful reading of the credit reports indicates that SOR ¶¶ 1.c is not delinquent. The Government has not established its case.

A careful reading of the credit reports indicates that SOR ¶¶ 1.d, and 1.e. are not delinquent. The Government has not established its case.

The Government observed correctly that SOR ¶¶ 1.g and 1.h were charged off in 2016 and 2017, respectively, before Applicant's parents were diagnosed with terminal illnesses. Although he admitted the allegations, the SOR does not allege an amount owed or that the accounts were delinquent. The Government has not established its case.

The Government observed correctly that SOR ¶¶ 1.a and 1.m were charged off in 2017 and 2016, respectively, before Applicant’s parents were diagnosed with terminal illnesses in 2019. Thus, their illnesses could not have adversely affected him financially. Those two debts, however, total \$1,408 and do not pose national security concerns.

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a - 1.q:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge