



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

In the matter of:)
)
XXXXXXXXXX) ISCR Case No. 23-01212
)
Applicant for Security Clearance)

Appearances

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

02/21/2024

Decision

KATAUSKAS Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations. Eligibility is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on September 15, 2022, in connection with his employment by a defense contractor. On July 27, 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 August 21, 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 September 21, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 8. On September 22, 2023, the FORM was mailed to Applicant. Applicant received the FORM on October 6, 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 November 8, 2023 (Response), to which the Government did not object. Government Items 1 and 2, the SOR and the Answer, respectively, are the pleadings in the case. Items 3 through 8 and the Response are admitted without objection. The case was assigned to me on January 4, 2024.

Findings of Fact

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

Applicant is 29 years old, has never married, and has no children. He obtained his bachelor's degree in December 2016. He completed all his course work for a master's degree in computer engineering but elected not to complete the program. He has been investigated for or was granted a secret security clearance for DOD but did not state the date. Since May 2017, he has been employed full time by a defense contractor. (Item 3.)

Under Guideline F, the SOR alleged that Applicant had 15 delinquencies totaling \$44,314. (Item 1.) He admitted 10 allegations. (SOR ¶¶ 1.b, 1.d, 1.f, 1.h – 1.m, and 1.o.) And he denied five allegations. (SOR ¶¶ 1.a, 1.c, 1.e, 1.g, and 1.n.) (Item 2.) As will be shown below, his denials were either that he was paying the debt, it was already paid, he was working on a settlement, or the amount was incorrect. No supporting documents were submitted. The delinquencies alleged are supported by the record. (Items 5-7.) The SOR debts were delinquent in 2022 and 2023. (Items 5 - 7.)

Applicant's personal financial statement (PFS) reported: Total Net Monthly Income of \$5,610; Total Monthly Expenses of \$4,001; and a Net Remainder of \$1,609. (Item 8 at 12.)

During his November 8, 2022 personal subject interview (PSI), Applicant was asked if he was meeting his financial obligations on time, was over 120 days delinquent on any debt, or if any of his bills or debts had been turned over to collection agencies. He is reported to have responded that he was currently meeting all his financial obligations. He was then advised of 14 of his debts that were in collections (debts that ultimately were alleged in the SOR). (Item 4 at 5.)

After further questioning, Applicant acknowledged the accounts and said he did not believe he needed to disclose them, because he believed they were up to date. He explained that the accounts in collections were not due to financial reasons but due to logistical reasons. He was relocating from the east coast to the west coast of the U.S. and failed to update his auto pay settings for each account, thus they lapsed into non-payment for more than 120 days. He does recall getting some notifications. He did not take action to resolve the problem until after receiving the notifications of non-payments. He will continue working on his finances by making sure all his accounts have auto payments and make payments on time. He hopes to have all accounts cleared in the next six months. (Item 4 at 6-7.)

SOR ¶ 1.a is a 2022 charged-off auto loan for \$16,628. (Item 5 at 12.) Applicant denied the allegation in his Answer, stating that it is an existing car loan he is paying, but he did not provide evidence pertaining to this debt. (Item 2.)¹ His most recent credit report reflects the full balance alleged in the SOR, with a last payment date of September 2022. (Item 5 at 12.) This debt is unresolved.

SOR ¶ 1.b is a 2022 charged-off auto loan for \$10,322. (Item 5 at 11.) In his Interrogatory Response, Applicant stated that the debt was paid but he did not attach documentation. (Item 8 at 3.) He admitted the allegation in his Answer without further elaboration and did not provide evidence pertaining to the debt. Applicant's most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 11.) This debt is unresolved.

SOR ¶ 1.c is a 2022 delinquent judgment for \$4,160. (Item 5 at 12.) In his Interrogatory Response, Applicant stated this account was not paid. (Item 8 at 4.) He denied the allegation in his Answer, stating that he paid the loan off and currently has a \$0 balance, but he did not provide any evidence to support that statement. In his Response, he submitted a Satisfaction of Judgment dated September 26, 2023. This debt has been resolved.

SOR ¶ 1.d is a 2022 charge off for \$3,868. (Item 5 at 16.) In his PSI, Applicant stated that he was not aware of this account. (Item 4 at 7.) In his Interrogatory Response, he stated that payment arrangements had been made but that he was not making payments. (Item 8 at 4.) He admitted the allegation in his Answer, stating he is currently negotiating a settlement with the creditor. Applicant's most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 16.) This debt is unresolved.

SOR ¶ 1.e is an account for \$1,052 that was placed for collection in 2021. (Item 6 at 3.) In his PSI, Applicant stated that this account was opened by his mother in his name and he believed it was paid. (Item 4 at 7.) In his Interrogatory Response, he stated this was not his account but did not provide documentation. (Item 8 at 5.) He denied the

¹ Hereinafter, references to the Answer in the text are to Item 2, which will not be repeatedly cited in the text.

allegation in his Answer, stating it is not his account but did not provide documentation to prove that statement, nor evidence that he disputed the debt. This debt is unresolved.

SOR ¶ 1.f is a medical account for \$825 placed for collection in 2021. (Item 6 at 3.) In his PSI, Applicant stated that this debt was from an emergency room visit and should be paid by his insurance. (Item 4 at 7.) In his Interrogatory Response, he stated this debt was not paid. (Item 8 at 5.) He admitted the allegation in his Answer without further elaboration or documentation. This debt is unresolved.

SOR ¶ 1.g is an account for \$815 placed for collection in 2022. (Item 6 at 3.) In his Interrogatory Response, Applicant stated this debt was not paid. (Item 8 at 5.) He denied the allegation in his Answer, stating that he was overcharged and the price should be updated, but he did not elaborate on what that meant, nor did he provide documentation supporting that statement. His most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 2.) This debt is unresolved.

SOR ¶ 1.h is a 2020 charge off for \$791. (Item 5 at 15.) In his Interrogatory Response, Applicant stated payment arrangements had been made on this debt but that he was not making payments. (Item 8 at 6.) He admitted the allegation in his Answer without further elaboration or documentation. His most recent credit report reflects the full balance alleged on the SOR. (Item 5 at 15.) This debt is unresolved.

SOR ¶ 1.i is a 2022 charge off for \$729. (Item 6 at 3-4.) In his Interrogatory Response, Applicant stated this debt was not paid. (Item 8 at 6.) He admitted the allegation in his Answer, stating he needs to return his old phone to have the balance removed. This debt is unresolved.

SOR ¶ 1.j is a 2022 charge off for \$646. (Item 5 at 16.) In his Interrogatory Response, Applicant stated this was paid and did not provide documentation. (Item 8 at 6.) He admitted the allegation in his Answer without further elaboration or documentation. His most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 16.) This debt is unresolved.

SOR ¶ 1.k is a 2019 charge off for \$628. (Item 5 at 14.) In his Interrogatory Response, Applicant stated this was paid and provided no documentation. (Item 8 at 7.) He admitted the allegation in his Answer without further elaboration or documentation. His most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 14.) This debt is unresolved.

SOR ¶ 1.l is a medical account for \$619 placed for collection in 2021. (Item 6 at 4.) In his PSI, Applicant stated that this debt was from an emergency room visit and should be paid by his insurance. (Item 4 at 7.) In his Interrogatory Response, he stated that this debt was not paid. (Item 8 at 7.) He admitted the allegation in his Answer without further elaboration or documentation. This debt is unresolved.

SOR ¶ 1.m is a 2020 charge off for \$507. (Item 5 at 4.) In his Interrogatory Response, Applicant stated payment arrangements had been made, but he had not made any payments. (Item 8 at 7.) He admitted the allegation in his Answer without further elaboration or documentation. Applicant's most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 4.) This debt is unresolved.

SOR ¶ 1.n is a 2022 charge off for \$196. (Item 5 at 13.) In his Interrogatory Response, Applicant stated this account was paid but he did not provide documentation. (Item 8 at 8.) He denied this allegation in his Answer, stating the account should be marked paid and closed. His most recent credit report reflects the full balance alleged in the SOR. (Item 5 at 13.) This debt is unresolved.

SOR ¶ 1.o is an account for \$2,528 placed for collection in 2022. (Item 7 at 4.) In his PSI, Applicant stated this charge should not be reported and that it might be from a semester of graduate school that he did not attend, but that he paid off all his completed courses. (Item 4 at 7.) In his Interrogatory Response, he stated the debt was paid but did not provide documentation. (Item 8 at 4.) He admitted the allegation in his Answer, stating that it is a student loan, but he provided no documentation on its current status. This debt is unresolved.

Although not alleged, Applicant's most recent credit report reflects two new delinquent debts: (1) an account that is past due in the amount of \$174, with a total balance of \$615; and (2) an account that has been charged off in the amount of \$235. Both became delinquent in 2023. (Item 5 at 4, 11.)

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.

The SOR debts are established by Applicant's admissions and the Government's credit reports. 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), and the individual acted responsibly under the circumstances;

(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.

The SOR debts on average became delinquent in 2021. So, they did not arise that long ago. And they persisted to be delinquent in 2022 and 2023. Thus, they are recurring. The SOR allegations are not mitigated by AG ¶ 20(a).

AG ¶ 20(b) has an initial requirement. That is, an applicant's financial problems must have been the *result of* conditions "largely beyond" his control. Thus, those conditions must have *caused* the financial problems. Applicant cited only logistical problems as the cause of his delinquencies. More specifically, in moving from the east coast to the west coast, he failed to update his autopay settings, thus disrupting his payment of bills. That is not a condition "largely beyond" his control. In fact, he solely caused that problem. The SOR allegations are not mitigated by AG ¶ 20(b).

For four debts, Applicant said there were payment arrangements in place. (SOR ¶¶ 1.a, 1.d, 1.h, and 1.m.) He did not, however, provide any documents supporting those assertions. Those SOR allegations are not mitigated by AG ¶ 20(d).

Applicant's responses to SOR ¶¶ 1.e, 1.g, 1.j, 1.l, and 1.o indicate that he disputes the legitimacy of those debts. He did not, however, provide documented proof to substantiate the basis of the dispute or evidence of his actions to resolve the issue. Those SOR allegations are not mitigated by AG ¶ 20(e).

In addition to the inapplicability of the mitigating conditions discussed above, Applicant's responses to the SOR allegations also share one overarching infirmity. Except for SOR ¶ 1.c, which he mitigated with documents showing he paid it, he has not provided any documentation supporting his assertions about the current status any of the other 14 SOR debts. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

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.

As part of my application of our facts to the whole-person concept, I have considered facts that are not alleged in the SOR. Unalleged conduct cannot be an independent basis for a denial. It can, however, be used to evaluate credibility and in the whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). The following facts will be considered for those limited purposes. Applicant’s most recent credit report reflects two new delinquent debts: (1) an account that is past due in the amount of \$174, with a total balance of \$615; and (2) an account that has been charged off in the amount of \$235. Both became delinquent in 2023. Although the total amount due is not substantial, given his record, I deem those facts to reflect adversely on his financial reliability.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.o:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge