



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 23-00315
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esquire, Department Counsel
For Applicant: *Pro se*

04/26/2024

Decision

HOGAN, Erin C., Administrative Judge:

On March 29, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On May 2, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 3, 2024. A Notice of Hearing was issued on January 25, 2024, scheduling the hearing on February 7, 2024. The hearing was held as scheduled, via video-conference. During the hearing, the Government offered eight exhibits which were admitted as Government Exhibits (GE) 1–8. Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A-B. The transcript (Tr.) was received on February 16, 2024. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 33-year-old employee of a DOD contractor seeking a security clearance. He has worked for his current employer since 2022. He has a high school diploma and expects to earn his bachelor's degree in May 2025. He served on active duty in the United States Air Force between 2011 and 2017. He separated from active duty with a discharge characterized as general under honorable conditions. He has held a security clearance since 2011. He is divorced and has two daughters from his first marriage, ages 10 and 7. His daughters reside with their mother in another state. He lives with his fiancé and their three-year-old daughter. (Tr. 22-33; Gov 1; AE C at 2)

The names of individuals, businesses, and institutions have been changed in this decision in the interests of protecting the Applicant's privacy. More detailed information is located in the case file.

Guideline F, Financial Considerations:

In his answer to the SOR, Applicant denies the allegation in SOR ¶ 1.f and admits the remaining SOR allegations.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 17, 2022. In response to Section 26, Financial Record, Applicant answered, "No" in response to whether he had delinquent accounts, charged-off account, or delinquent accounts that were placed for collection. A subsequent security clearance background investigation revealed ten delinquent debts totaling approximately \$43,998. (GE 1; GE 8). The debts include: a \$14,902 charged-off automobile loan (SOR ¶ 1.a: GE 2 at 4; GE 3 at 4; GE 4 at 1); a \$3,107 account that was placed for collection (SOR ¶ 1.b: GE 2 at 4; GE 3 at 2; GE 5 at 5); a \$428 charged-off credit card account (SOR ¶ 1.c: GE 2 at 5; GE 3 at 3); and a child support account placed for collection with approximately \$4,409 in arrears. (SOR ¶ 1.d: GE 3 at 2).

Additional delinquent accounts include a \$489 delinquent pet hospital account that was placed for collection (SOR ¶ 1.e: GE 3 at 3); a \$366 delinquent medical account that was placed for collection (SOR ¶ 1.f: GE 3 at 3-4); a delinquent child support account that was past due in the amount of \$1,988 (SOR ¶ 1.g: GE 3 at 4; GE 4 at 1); a \$95 account that was charged-off by a bank (SOR ¶ 1.h: GE 4 at 1; GE 5 at 4); a \$17,299 charged-off automobile loan (SOR ¶ 1.i: GE 4 at 1; GE 5 at 5); and a \$515 cell phone account that was placed for collection (SOR ¶ 1.j: GE 4 at 1)

Applicant testified he was not knowledgeable about how to handle finances while growing up. He made some irresponsible financial decisions when he was on active duty in the Air Force. His ignorance caused him to ignore debts and financial obligations when he was younger. As he has gotten older, his financial situation has improved. He does not want to jeopardize his ability to continue meeting his obligations and be a provider for his family. (Tr. 19-20) The status of each debt is:

SOR ¶ 1.a: a \$14,902 charged-off automobile loan: Applicant co-signed the loan for a car with a woman he was dating around the summer 2017. They eventually broke up and his former girlfriend kept the car under the premise that she would continue to make the car payments. She stopped making the car payments. As the co-signer, the bank has the right to collect the loan from Applicant. He first learned of the issue in May 2019. He has never contacted the creditor about resolving this account. It appears the car was voluntarily surrendered in May 2022. He tried to contest the debt to get it removed from his credit report. He had made no payments towards this debt because he believes it is unfair for him to have to pay his ex-girlfriend's debt. The status of the debt is unresolved. (Tr. 34-39, Response to SOR)

SOR ¶ 1.b: a \$3,107 delinquent loan placed for collection: Applicant testified he used this loan for a down payment on a car purchase. The loan became delinquent because he did not have the money to make payments. He testified he does not have to pay the account because the debt is over seven years old and it is no longer on his credit report. He does not intend to make payments towards this account because the debt is uncollectible. (Tr. 39-42; Response to SOR)

SOR ¶ 1.c: a \$428 charged-off credit card account: Applicant paid this debt in full on June 1, 2023. After the hearing, he provided a receipt from the creditor indicating the debt is paid in full. (Tr. 42-43; AE B at 10; AE C at 7)

SOR ¶ 1.d: a \$4,409 delinquent child support debt placed for collection: This debt relates to child support for his two daughters from his first marriage. When they first divorced, Applicant sent money to his ex-wife for his children's expenses. He stopped making direct payments when he learned that he was not given credit through the state child support office. There were times he was unable to pay child support because he was unemployed. He initially paid \$1,000 a month in child support. His wife agreed to reduce the child support payment to \$400 because of his reduced income. In his response to the SOR, he mentioned that he was making payments of \$500 to catch up on the child support arrearage. He also mentioned that his tax refunds will be applied to the arrearage. He believed this resolved the child support arrearage. The record was held open to allow Applicant to provide additional documents about his child support accounts. In particular, a payment history from the state child support office indicating that Applicant was making regular payments towards his child support and any other evidence to show that he was making his child support payments, including towards the child support arrearage. After the hearing, he provided one document showing a \$400 child support payment on February 6, 2024. There is insufficient evidence to conclude Applicant is making regular child support payments and is resolving the child support arrearage. (Tr. 31-32, 57-62; Response to SOR; AE A)

SOR ¶ 1.e: a \$489 pet hospital account placed for collection: Applicant states that this was a bill for treatment of his dog who became very sick. This occurred shortly after he separated from active duty in 2017. He states it is more than seven years old and is no longer on his credit report. He never made payment and is not sure of the status of the account. The debt is unpaid. (Tr. 63-64; Answer to SOR)

SOR ¶ 1.f: a \$366 delinquent medical debt placed for collection: Applicant denies this debt. While on active duty, he had surgery at the base hospital and was issued a scooter to help with his mobility. He claims he returned the scooter to his treatment team. They were supposed to note in the records that he had returned it. They did not do so and he was held liable for the scooter. He believes he does not owe this debt. He also mentioned it is no longer on his credit report so he does not intend to dispute the debt. (Tr.65-69; Response to SOR)

SOR ¶ 1.g: \$2,388 past-due debt owed to the Office of the Attorney General for past-due child support: Applicant claims this is the same child support debt that is alleged in SOR ¶ 1.d. He is making payments. He did not provide documentary proof that shows this is the same child support debt and that he is making regular payments towards this account. (Tr. 62-63; Response to the SOR)

SOR ¶ 1.h: a \$95 charged-off debt owed to bank: In his Answer to the SOR, Applicant claims he paid this debt and is waiting for the receipt from the creditor. During the hearing, he said he will obtain proof that the debt was paid. The record was held open to allow him the opportunity to provide a receipt. He did not provide proof the debt was paid. However, a May 2021 credit report lists the account as resolved. I find SOR ¶ 1.h for Applicant. (Tr. 69; Response to SOR; GE 4 at 1)

SOR ¶ 1.i: a \$17,299 delinquent automobile loan that was charged off: This was a loan Applicant took out in 2015 to purchase a used car. The car broke down. It was too expensive to fix. He did not want to pay for a car that he could not use so he did not make payments on the car loan even though he was responsible for the loan. He testified that the debt is no longer on his credit report and he will not make payments towards this debt because it is no longer collectable. The debt is unpaid. (Tr. 69-72; Answer to SOR)

SOR ¶ 1.j: a \$515 delinquent cell phone account placed for collection: Applicant claims he co-signed for cell phones for two of his fellow airmen when he was on active duty. His two friends got into trouble and were discharged from the Air Force. They took the phones with them and did not make payments. He did not make payments towards this debt. It is no longer on his credit report so he does not intend to pay it. The debt is unpaid. (Tr. 72; Response to SOR)

Applicant testified that he has no other delinquent accounts. He is meeting all of his current financial obligations. He has read books about managing finances and learned more about financial literacy. He is more financially responsible. His previous financial problems are not reflective of who he is today. He wants to show that he has integrity and can be trusted by the Government. (Tr. 19-21, 73)

After the hearing, Applicant provided more details about his household finances. His current salary is \$147,900 annually, his take home pay is \$4,248 every two weeks, or \$8,496 a month. He also receives Veteran's Administration (VA) disability payments. His monthly payments are \$2,270, a total of \$27,240 annually. His fiancé is a GS-15

employee of the federal government. Her take home is likely \$12,000 a month. They split their expenses which include Rent: \$4,000; Bank: \$35; Cell; \$200; Insurance \$495; Storage \$128; car loans \$1,240; Electric: \$112; Daycare; \$1,540; Child Support \$600. The total expenses are \$8,350. (AE C at 3-5) He testified that he is current on federal and state income taxes. At hearing, he estimated that he has \$1,200 left over each month after paying his bills and obligations. He has approximately \$12,000 in his retirement account and \$6,000 in savings. His fiancée has between \$1,000 and \$1,500 remaining each month after paying her bills and obligations. (Tr. 76-78)

Applicant had several periods of unemployment, to include two months after separating from active duty in August 2017, 30 days in July 2020, January to February 2021, October 2021, and July 2022. (Tr. 44-49)

During the hearing, Applicant disclosed he had issues with anxiety and depression. He started working with a counselor at the VA in early 2022. He went to counseling there for a year. He now sees a private therapist recommended by the VA. He suffered from trauma in the past. Counseling and therapy have improved his condition. He is learning techniques to deal with his anxiety and depression. He is not taking medication. He is better equipped to deal with his responsibilities. (Tr. 51-56)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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 access for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 as to obtaining a favorable security decision.

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 the applicant may deliberately or inadvertently fail to protect or 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.

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).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline 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. 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

At the time the SOR was issued, Applicant had ten delinquent accounts, an approximate total of \$43,998. He has a history of financial irresponsibility, to include co-

signing loans and subsequently refusing to pay the loan, child support arrearages, and other delinquent debts. AG ¶¶ 19(a) and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15)

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's 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; and

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

AG ¶ 20(a) does not apply. While most of Applicant's debts became delinquent several years ago, they are still considered recent because "an applicant's ongoing unpaid debts evidence a continuing course of conduct, and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions. ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 20217) (citing ISCR Case No. 15-01690 at 2 (App.Bd. Sept. 13, 2016) Applicant's failure to resolve his delinquent debts raised questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant encountered brief periods of unemployment as well as a divorce, which were conditions beyond his control. This mitigating condition is given less weight because he did not act responsibly under the circumstances. He chose to ignore his delinquent debt. He passively waited for seven years to pass so his debts fell off his credit report. This is not considered acting responsibly or a reasonable effort to resolve his delinquent debt.

AG ¶ 20(d) applies with respect to the debts alleged in SOR ¶¶1.c, and 1.h. He provided proof that he satisfied the debt in SOR ¶ 1.c. A May 2021 credit report indicates the debt alleged in SOR ¶ 1.h is resolved. I cannot apply AG ¶ 20(d) to the remaining SOR allegations because he failed to provide sufficient documentation to prove that he paid or is making regular payments towards his delinquent debts, in particular his child support and arrearages. With regard to the debts alleged in SOR ¶¶ 1.a – 1.c, 1.f, 1.i and 1.j, he intentionally waited for seven years to pass so his debts would fall off his credit report and become unenforceable because of the statute of limitations. Passively waiting for the debts to become unenforceable because of the statute of limitations is not considered a good-faith effort to resolve one's debts. It remains significant for security clearance purposes. See ISCR case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016) and ISCR Case No. 15-01208 at 3 (App. Bd. Aug 26, 2016)

Applicant did not mitigate the security concerns raised under Financial Considerations.

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 timely 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 considered Applicant has worked for the same defense contractor since 2022. I considered Applicant made poor financial

judgments in the past. Rather than paying his financial obligations, he chose to passively wait seven years until the debts were no longer collectible and taken off his credit report. He did not provide sufficient documentation to show the history and current status of his child support payments to include the arrearages. While Applicant's current financial situation appears to be relatively stable, his past actions raise questions about his trustworthiness and reliability. Security concerns under financial considerations are not mitigated.

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.b, 1.d-1.g, 1.i-1.j:	Against Applicant
Subparagraphs 1.c and 1.h:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge