



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



In the matter of:)	
)	
)	ISCR Case No. 23-02852
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Pro se

05/13/2024

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns under Adjudicative Guideline F (Financial Considerations). Based upon a review of Applicant’s testimony and the documentary evidence, national security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on October 4, 2022. On January 22, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Adjudicative Guideline (AG) F. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines effective within DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 16, 2024. He admitted all 12 SOR allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on March 20, 2024. The case was assigned to me on March 25, 2024. DOHA issued a Notice of Microsoft Teams Video Teleconference Hearing on April 2, 2024. The case was heard on April 23, 2024, as scheduled.

The Government presented six documents marked as Government Exhibits (GE) 1 through 6. Applicant testified on his own behalf and offered one document, which I marked as Applicant Exhibit (AE) A. I kept the record open until April 30, 2024, to give Applicant the opportunity to supplement the record. He timely submitted four documents, which I marked as AE B through E. I admitted all of the parties' exhibits without objection. DOHA received the transcript of the hearing (Tr.) on April 30, 2024. (Tr. at 12-13, 37.)

Findings of Fact

Applicant is 43 years old. He was born in the Philippines and immigrated to the United States with his grandmother at the age of four. He became a U.S. citizen in 1997. He received a high school diploma, and he has earned about 30 college credits. He enlisted in the U.S. Navy in 2002 at the age of 22. Shortly thereafter, he married. Applicant and his wife have four children, ages 2 to 21. (Tr. at 14-15.)

Applicant retired from the Navy in 2022 at the pay grade of E-7 after twenty years of service. He received an honorable discharge. He held a security clearance while serving in the Navy. A few months after his retirement, Applicant was hired by a U.S. defense contractor to work as a computer technician. In October 2022, he applied to continue his eligibility for a security clearance in connection with his civilian employment. (Tr. at 15-16.)

Applicant testified that he and his wife did not have sufficient training to manage their finances responsibly. Starting in 2012, he accumulated about \$100,000 of credit-card debt and an outstanding loan of about \$30,000. In 2018, he sought financial guidance from a bankruptcy attorney/credit consultant (the Advisor). Applicant's security clearance was due to be reviewed and he wanted to resolve his debts to avoid a problem with his renewal. (Tr. at 17-21, 31, 33-37, 42.)

The Advisor told him to cease making his monthly payments on his debts so that he could establish financial hardship to help himself in a planned bankruptcy proceeding. Applicant paid the Advisor's fee of \$1,200 with monthly payments of \$200 over six months. Thereafter, the Advisor counseled him not to file for bankruptcy because the resulting bankruptcy court-approved repayment plan for all of his debts would be expensive. He also advised Applicant to continue his non-payment of his debts. They

concluded that they would only file a bankruptcy petition if a creditor sued Applicant and his wife. Neither Applicant nor the Advisor took any further steps to address Applicant's indebtedness. At the hearing, Applicant admitted that when he stopped paying his debts, he could afford to continue making minimum payments if he chose to do so. (Tr. at 17-21, 31, 33-37, 42.)

At the hearing, Applicant's position was that he is not indebted to the creditors for the debts listed on the SOR. He attached to his Answer a letter from the Advisor, dated March 3, 2023. The letter is also part of the Government's evidence and is marked as GE 6. In his letter, the Advisor wrote that he was retained by Applicant and his wife in September 2018 in preparation for filing a Chapter 7 bankruptcy petition. He commented further, "To date, we have deemed it unnecessary to file bankruptcy because all of the unsecured debt obligations owed by [Applicant and his wife] are now barred by law from collection proceedings by the State of [State A] Statute of Limitations." Applicant testified that the Advisor told him that it was "a rarity" that banks would close out a customer's credit-card accounts without seeking payments and the debts "just [go] away." Applicant acknowledged that he did nothing to try to resolve any of his debts with payments. He got "lucky and [the debts] disappeared," in the words of the Advisor. (Tr. at 22, 27-28.)

Applicant claimed at the hearing that his credit report reflected that he owes nothing on his old credit cards. After the hearing, he submitted an excerpt of a credit report. This document (AE E) reflects that the accounts had been "closed," but the report does not state that Applicant no longer owes any money to the creditors. To the contrary, the report contains the amount of each of the debts. (Tr. at 37; AE E.)

Applicant claims that since 2018 he has handled his finances responsibly. He has not incurred any new delinquent debts. His only new debts are two car loans and one credit-card account. He also said that he received some financial counseling from the Advisor and perhaps from classes he took while in the Navy. (Tr. at 18, 31-32.)

The debts alleged in the SOR are as follows:

1. Credit-Card Issuer A: \$20,959 (SOR ¶ 1.a); \$17,376 (SOR ¶ 1.b); \$7,867 (SOR ¶ 1.d); \$7,507 (SOR ¶ 1.e); \$6,164 (SOR ¶ 1.f); \$5,032 (SOR ¶ 1.g); \$4,835 (SOR ¶ 1.h); \$4,290 (SOR ¶ 1.i); and \$3,758 (SOR ¶ 1.j). Applicant stopped paying these accounts in 2018 pursuant to the Advisor's recommendation. The issuer never filed a lawsuit to collect these debts, and as of the date of the hearing, it has not issued an IRS Form 1099-C to cancel these debts for tax purposes. These debts are not resolved. (Tr. at 27-29; GE 3; GE 4; GE 5; GE 6.)

2. Credit-Card Issuer B: \$8,540 (SOR ¶ 1.c). Applicant testified that this debt was for a credit card that he defaulted on in 2018 along with the accounts listed in paragraph no. 1, above. There is no evidence of any debt-resolution efforts. This debt is not resolved. (Tr. at 30; GE 1 at 36-37; GE 3 at 4; GE 4 at 2; GE 5 at 4.)

3. Credit-Card Issuer C: unspecified delinquent debt (SOR ¶ 1.k). Applicant's credit reports reflect that this credit-card account had a credit limit of \$10,000. His December 2022 credit report in the record (GE 5 at 4) states that the outstanding balance at that time was \$11,190, which is the amount of the debt listed by Applicant on his October 2022 e-QIP. Applicant defaulted on this debt in 2018 and has made no effort to repay the debt since then. He testified that the creditor issued a Form 1099-C to him in 2023 in connection with his 2022 tax returns. He submitted a copy of the Form 1099-C after the hearing and that document states that the creditor cancelled the debt in the amount of \$9,213. He also submitted excerpts of copies of his amended federal and State A income tax returns that reflect the cancelled debt as income with an additional tax owed to both tax authorities. Applicant testified that he paid the extra taxes he owed. This debt is resolved. (Tr. at 22-25, 30; GE 1 at 37; GE 3 at 9; GE 4 at 4; AE B; AE C at 1-2.)

4. Lender: unspecified delinquent debt (SOR ¶ 1.l). Applicant testified that he took out this personal loan to assist his mother, who was experiencing financial difficulties. The loan was in the original amount of \$30,000, but it grew with interest to about \$75,000. Applicant defaulted on this loan in 2018 and has taken no steps to repay the loan since then. This debt is not resolved. (Tr. at 29-30; GE 1 at 42-43; GE 4 at 4.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;

- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means.

The Government's credit reports in the record, Applicant's admissions in the Answer, and his testimony at the hearing establish the existence of these unpaid debts and the application of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate security concerns under Guideline F.

The guideline includes the following five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, or 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 incurred the 12 debts alleged in the SOR several years ago. However, his failure to make any effort to repay the debts since 2018 casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) has not been established.

Applicant did not establish that he was unable to pay his debts or that the conditions that resulted in his delinquent debts were due to circumstances beyond his control. Moreover, Applicant failed to act responsibly by repaying all or even part of his debts. AG ¶ 20(b) has not been established.

Although Applicant may have received financial advice, the legitimacy and credibility of the source of that advice is unconvincing. The Advisor merely guided Applicant on how to avoid paying his legal debts, not how to resolve them responsibly. Moreover, unenforceable debts remain relevant for security clearance purposes. The status of the debts as legally barred from collection is not the same as the debts being resolved within the meaning of the Directive. See ISCR Case No. 15-01208 at 2 (App. Bd. Aug. 26, 2016). AG ¶ 20(c) has not been established.

AG ¶ 20(d) has not been established because Applicant did not initiate good-faith efforts to repay his overdue creditors or otherwise resolve his debts. While Applicant's failure to act for a period of years may be a legal tactic to avoid paying his debts, his inaction does not constitute a good-faith effort to resolve his debts. See ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005).

Although Applicant may elect not to pay his debts because they are unenforceable under state law, he has no basis to dispute the legitimacy of the debts. In fact, he has admitted that he incurred each of the SOR debts. AG ¶ 20(e) has not been established.

Accordingly, Applicant failed to carry his burden to mitigate the security concerns raised by his indebtedness. He claims that he has been behaving responsibly with regard to his finances since he defaulted on his debts in 2018, but he has not acted responsibly with respect to the SOR debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given significant weight to Applicant's 20 years of service to the U.S. Navy and his honorable discharge. However, his inaction

regarding his numerous delinquent accounts shows that he lacks the maturity and sense of responsibility required for national security eligibility. Applicant could have filed for bankruptcy protection and repaid all of his creditors over a five-year period pursuant to a sanctioned bankruptcy plan, but he chose instead to avoid that responsible action because it would have been expensive. Also, Applicant incurred all of this delinquent credit-card debts because he chose to overspend so that he could maintain a lifestyle he could not afford. His actions since 2018 have been consistently self-interested and irresponsible as they were before 2018. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge