



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



In the matter of:)	
)	
)	ISCR Case No. 23-00320
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2024

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 12, 2022. On April 27, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The CAS issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 6, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 5, 2024. On March 22, 2024, following consultation with the parties, DOHA issued a notice scheduling the hearing for April 18, 2024. The hearing was to take place virtually, through an online platform.

The hearing convened as scheduled. Applicant appeared from his overseas location. At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 5. GE 1 through GE 4 were admitted without objection. Applicant objected to GE 5, a current credit report, because the debt totals shown did not reflect recent payments. This objection was overruled. (Tr. 22-23) Applicant testified and submitted documents that I marked as Applicant's Exhibits (AE) A through H, all of which were admitted without objection. I left the record open to allow him the opportunity to submit additional information. (Tr. 79)

On April 26, 2024, Applicant submitted numerous documents by e-mail. I labeled them as Post Hearing (PH) exhibits 1 through 8, generally following the descriptions he provided in the email. He later submitted a recommendation letter from a supervisor (PH 9) and a fax from Creditor R (PH 10). Applicant's post-hearing exhibits are admitted without objection. DOHA received the hearing transcript (Tr.) on April 30, 2024. The record closed on May 3, 2024.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 1.c, and denied SOR ¶¶ 1.b, 1.d, and 1.e, all with explanations. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 35 years old. He graduated from high school in 2007 and has some college credits. He is not married and has no children. Applicant served on active duty in the Army from 2010 to 2014. He then served in in the Army Reserve from 2014 to 2018 as a sergeant (E-5) but had limited employment during this period. He held a clearance in the Army. (GE 1; Tr. 10) He has worked overseas in the middle east for defense contractors since October 2020 and for his current employer and clearance sponsor since October 2021. Earlier, he worked in the communications industry in the U.S. from November 2019 to October 2020 and was also self-employed as a cable supplier for several months from January 2020 to August 2020. (GE 1, Tr. 33-34, 46-48, 54; PH 1)

Applicant disclosed several of his SOR debts on his SCA and discussed his debts at length in his November 2022 background interview. (GE 1, GE 2) Applicant authenticated the summary of his background interview in April 2023. He made some corrections and provided some updates, but they concerned matters not directly related to his debts or finances. (GE 2; Tr. 18-21)

Applicant testified that he was in the Army Reserve from 2014 to 2018. His civilian employment during these years earned him little more than a subsistence income. In 2017

and 2018, he deployed to Kuwait with his unit and was able to pay some of his debts with the money he made. He said he had as many as 17 credit card accounts and paid down what he could, leaving the largest ones for last. After his overseas tour, he began looking for jobs but found it harder to find employment than he expected. A friend advised him to start his own business. He had good credit and was able to get a \$50,000 line of credit. He started his information technology (IT) cable business without proper infrastructure or professional advice on how to do it. (Tr. 30-38, 45-46, 55-56)

Applicant started his business in 2018 or 2019, and his debts were apparently mounting before then. He then took a job as a defense contractor with company V, in 2020, in the middle east on a one-year contract. He wanted to use the money he earned to pay down his debts. The contract was extended in 2021, but he was diagnosed with COVID in January 2022. He was sent home to the United States to recuperate from February to September 2022, as an unpaid employee. He had medical bills that set him back financially. He returned to the middle east in September 2022, which allowed him to resume addressing his debts. (Tr. 31-34, 48-49, 56-59) He also had mental health issues during this period. He had a bad reaction to the medication he was given and was hospitalized. (GE 2)

The SOR alleges five delinquent debts, all loan debts or credit-card accounts. The debts total about \$106,134. Applicant's delinquent debts are listed on credit bureau reports (CBRs) from August 2020 (GE 4), March 2023, (GE 3), and April 2024 (GE 5). He asserted in his SOR Response that he had paid off 10 other credit card accounts. He updated the status of his SOR debts in an email before his hearing, with related documents. (AE A; Tr. 67-68) The current status of his SOR debts is as follows:

SOR ¶ 1.a (\$2,588) is a charged-off credit card account. (GE 3, GE 4) This was the first debt Applicant was able to address. After he received the SOR, he arranged in May 2023 to settle the account for \$1,942. He made that full payment in August 2023. (SOR Response; AE A, AE C; Tr. 41-42, 59-60) This account is resolved.

SOR ¶ 1.b (\$38,431) is a loan account that has been charged off. (GE 3, GE 4, GE 5) Applicant took the money from this loan and invested it in the bitcoin cyber-currency market, with the hopes that it would increase in value, allowing him to fund his business venture. He now recognizes that this was a big mistake since this plan was wholly unsuccessful. (Tr. 37-41) Applicant was told that the creditor, Bank S, had sold the account to debt collector Z. He said he was disputing the debt, largely on the grounds that he had not received communication from debt collector Z confirming that he was obligated to them. (SOR Response) Applicant arranged a settlement with a different debt collector firm. He is to pay \$384.50 a month, beginning in April 2024 for an undetermined time. (The schedule he provided is for the next 12 months but it is not clear that the debt would be settled in April 2025, as no settlement amount is given). (PH 7; Tr. 39-41, 63-66) This account is not resolved.

SOR ¶ 1.c (\$54,706) is a debt placed for collection by a credit union. (GE 3, GE 4, GE 5) This is a line of credit Applicant took out to start his business in about 2018 or 2019.

(Tr. 37-41) Applicant wrote in his SOR response that he had received a settlement offer of between \$38,000 and \$49,000 but would have to make a lump sum payment. (SOR Response) In April 2024, Applicant arranged to settle the account for \$21,882 with 36 monthly payments of about \$608, beginning in April 2024. (AE A, AE E, AE F, Tr. 25-28, 58-66) This account is not resolved.

SOR ¶ 1.d (\$6,842) is a debt that has been charged off by a bank. (GE 3, GE 4) Applicant denied the debt, having been told by the creditor bank that the account had been sold to an unidentified collection agency. He arranged payments of about \$266 per month on this debt, beginning in September 2023 to collection agency R. (AE D; Tr. 25, 44-45, 59-60, 63-65, 67) He said he had \$1,062 left to pay at the time of the hearing (April 2024), though an April 2024 credit report listed the account at \$4,483. (GE 5) After the hearing, he documented that the account has been paid off in full as of April 18, 2024. (PH 6; PH 10) This account is resolved.

SOR ¶ 1.e (\$3,567) is a credit card account that has been charged off. (GE 3, GE 4, GE 5) Applicant denied the debt, asserting that it was supposed to have dropped off his credit report. After the hearing, he settled the debt for \$1,248, and made the full payment in April 2024. (Tr. 67; PH 5) This debt is settled and resolved.

Applicant noted that he has matured and learned from his mistakes. He wished he had been more patient. He plans on continuing to address his debts and stabilize his finances. He said he had about \$16,000 in savings. He has not received financial counseling. He owns no car or property in the U.S. His overseas housing is paid for by his employer. He has minimal expenses. (Tr. 43-45, 68-70, 78-79, 85-86)

Applicant was in the process of filing his 2022 and 2023 annual state and federal income tax returns at the time of the hearing. He got an extension because he lives overseas. He attributed his failure to file his 2022 returns to the mental health issues he addressed in his interrogatory response. (GE 2; Tr. 69-75) After the hearing, he later provided his 2022 State and Federal tax returns (PH 3a, PH 3b) and 2023 Federal return (PH 3c) and did not appear to owe taxes. He earned about \$79,000 in 2023. (PH 3)

Applicant received the job offer from his current employer in November 2022, at an hourly rate of \$19.73. The offer was a 12-month contract, to be renewed in December 2023. (PH 8; Tr. 47-48, 75-76) He estimated his 2024 income at about \$103,000. (Tr. 76; PH 2) He is well-regarded at work. (AE H; PH 9; Tr. 28-29)

Applicant has been rated by the Department of Veterans Affairs (VA) as having a service-connected disability. In 2018, he received an overpayment of about \$8,000 but has since repaid it. Since late 2019, his monthly benefits have risen from \$617 to \$1,716 as of December 2023. (Tr. 49-52; PH 4a, PH 4b, PH 4c)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “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).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 several 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 to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

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

The Guideline F allegations in the SOR concern multiple past-due consumer debts and loans, which total over \$100,000. The SOR debts are established by the credit reports in the record and by Applicant's testimony. AG ¶¶ 19(a) and 19(c) apply.

The guideline 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, 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 almost \$100,000 in debts after he took out loans to start a business, without much of a plan for how to do it. He invested much of his loan proceeds in cyber-currency with an eye towards making money to grow his business, but then lost most of his investment. Other SOR debts resulted during this period, when he also had only a subsistence income. AG ¶ 20(b) has some application here since his employment and health instability impacted his ability to address his debts. However, as Applicant recognizes, he made a very poor decision to finance his business start-up through cyber-currency investments, and without a business plan. AG ¶ 20(b) therefore does not fully apply.

Applicant took a job overseas in 2021 to earn money to address his debts but spent much of 2022 back in the U.S. recuperating from COVID-19. He only began addressing his debts in mid-2023. The smaller debts, SOR ¶¶ 1.a, 1.d, and 1.e are now paid and resolved. Although he has established a payment plan, Applicant has yet to provide proof of any payments for the two larger debts alleged in SOR ¶¶ 1.b and 1.c. These two debts total well over \$90,000, and they remain unresolved. AG ¶ 20(a) does not apply. He makes a good salary at his job, and his income is supplemented by disability compensation from the VA. However, he did not provide sufficient evidence that his debts are being resolved and are under control, or that he has undertaken a good-faith, reasonable effort to address his debts under the circumstances. Applicant did not establish that any of the remaining mitigating conditions should fully apply to mitigate the security concern shown by his delinquencies.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant exercised poor financial judgment in

taking out large loans to finance a business and then investing that money in the cyber-currency market. This has left him with a large debt load he still has to address. He has a history of financial difficulties. These debts will remain a security concern until he shows a documented track record of good-faith efforts to resolve them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not provide 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:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge