DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 23-00727
	)	
Applicant for Security Clearance	)	

Appearances

For Government: William F. Miller, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2024

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Decision

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MURPHY, Braden M., Administrative Judge:

In August 2020, Applicant entered into a contract for solar equipment to be installed at his house. The project was financed through a loan from a finance company. The solar equipment was installed, but not to Applicant's satisfaction. He has disputed responsibility for making payment on the loan ever since. He also retained a third party to complete operation of the solar equipment, which is now licensed and operating. There is no indication that he has informed the solar equipment company, the financing company, or the bank that now owns the loan, that the equipment is now operational. He has taken no action to initiate payment for the solar panel system. The loan remains charged off, though it was removed from his credit reports shortly before the hearing. Applicant is benefitting from installation of solar panel equipment for which he has no intention to pay. While he believes his disputes with the solar equipment company are valid, he nonetheless has a working solar panel system in his home, financed by a past-due loan for which he has paid nothing. He is essentially benefiting from unjust enrichment. He has not acted responsibly or in good faith and the debt remains ongoing and unresolved. Despite the isolated nature of the debt, security concerns alleged and established under Guideline F (financial considerations) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 9, 2022. On May 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The CAS 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on May 31, 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. The case was initially set for a hearing by video teleconference on April 22, 2024, by mutual agreement. On that day, when the parties appeared on camera, it was apparent that Applicant was appearing from a hospital room, and he reported that he had been admitted overnight following a visit to the ER. By mutual agreement, the hearing did not convene, and was rescheduled to May 23, 2024, also by video-teleconference. A hearing notice was subsequently issued, on April 29, 2024. (Tr. 14-15)

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6. Applicant testified and submitted Applicant's Exhibits (AE) A through BBB. All the exhibits were admitted without objection. The day after the hearing, he submitted three credit reports by email, all from May 24, 2024, for admission into the record. The email (AE CCC) and the credit reports (AE DDD, EEE, and FFF) were all admitted without objection. (Hearing Exhibit (HE) V) DOHA received the hearing transcript (Tr.) on June 6, 2024.

The record initially closed on May 24, 2024. However, while preparing the decision, I reopened the record on August 2, 2024, to inquire whether Applicant had responded to a letter he had received from the creditor, Bank K, a week before the hearing. (HE VI) On August 7, 2024, Applicant submitted a timely response with a lengthy narrative, submitted by e-mail, with four attachments. His response is marked as AE GGG and admitted without objection. (HE VII) The record closed on August 7, 2024.

Pre-Hearing Jurisdictional Matter

When he was first contacted about scheduling his hearing, Applicant asserted that the subject matter of the hearing (the debt at SOR ¶ 1.a) had been reviewed and adjudicated by another government agency, which had granted him "a reduced level of clearance." This was interpreted as eligibility for a position of public trust. At my request, Department Counsel researched the matter, and noted that Applicant was now seeking eligibility for a secret security clearance granted by DOD, and reciprocity did not apply, under Section E.1.c of SEAD 7. (HE I, HE II) Department Counsel is correct. I explained my ruling at the beginning of the hearing. (Tr. 15-19, 70-73, 139-148)

A Note on the Exhibits

Applicant submitted numerous exhibits prior to the hearing. All of them were admitted, as noted above. During the hearing, it became apparent that I did not have available copies of several of his proffered exhibits, though Department Counsel did. I therefore asked Department Counsel to mark and identify those documents (AE Q through AE WW) for the record. He did so, using the descriptions provided by Applicant in his exhibit list (AE Q). (Tr. 49-60) In some cases, Applicant's descriptions of some of his documents contained his own conclusions of what the documents showed. I have described the documents in the Findings of Fact section, below.

AE B is a 64-page document, comprised mostly of e-mails and other documents between Applicant and various commercial, financial, and governmental entities involved in his solar equipment project. They are largely dated between October 2020 and August 2021. Most, but not all, of these documents were also provided as separate exhibits here. Where AE B is cited in the facts section, below, I have used page numbers to aid in the documents' identification.

Lastly, the exhibit list in the transcript (Tr. 3-4) is incomplete, as several exhibits admitted during the hearing (GE 5, AE K, AE DD, and AE XX-ZZ) are erroneously not listed.

Findings of Fact

Applicant denied SOR ¶ 1.a, the sole debt in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He is married and has two adult children and one minor child. He has worked for a large consulting company since November 2021. He has a high school diploma, some college courses, numerous certifications, and over 25 years of experience in government contracting. He has an annual salary of over $120,000. (GE 1; AE K, AE L; Tr. 70-71, 187-189, 232-236)

Applicant has held clearances in the past and provided a non-disclosure agreement from October 2022. (Tr. 12-13; AE VV) He also believes he has, or has had, eligibility for access to sensitive, but unclassified, information, through contracting work with other government agencies outside of DOD. This was not verified by Department Counsel, though Applicant has a Common Access Card (CAC). (Tr. 142-148; *see also* jurisdiction discussion, above) Applicant takes pride in his work and profession and how he manages his life. The loss of his clearance would be a detriment to his career. (Tr. 70-71, 159, 232-236) He is very well regarded at work (AE J)

This case involves a single past-due debt, of $34,264, owed to Bank K. (SOR ¶ 1.a), a loan Applicant incurred to finance installation of solar power equipment at his home. The debt is listed on a September 2022 credit bureau report (CBR) as being in collection to a solar equipment loan company. (GE 3 at 2).

Applicant did not disclose the debt as delinquent or past due on his August 2022 SCA and did not raise the debt in his background interview, a month later, until he was confronted about it. He then briefly explained the origins of the loan and the solar company and said that the debt was settled and closed. (GE 1 at 36-38; GE 2 at 3; Tr. 190-191). In his January 2023 interrogatory response, Applicant reported that the debt was paid, while also providing numerous documents about the solar equipment project. (GE 5 at 2, 10; Tr. 191-193)

The debt is also listed as past due to Bank K on a May 2023 CBR (GE 4 at 8) and as charged off by Bank K on April 2024 CBRs provided by both parties. (GE 6 at 8; AE G at 16-17, AE H at 58; Tr. 141, 189)

At the outset, it is worth noting that there is no dispute about Applicant's ability to pay the debt. He earns a six-figure salary and has ample assets and income, as indicated by recent personal financial statements, pay stubs and the above credit reports, which show no other delinquencies of note. (GE 5 at 7; AE M, AE N; Tr. 212)

Chronological Timeline

Applicant and wife own their home in State 1. In August 2020, he was contacted by a sales representative for solar panel equipment company MS. He was interested in having solar panel equipment installed on his house. He testified that his parents had a solar-powered home, and that he had some knowledge and expertise in the field. He also testified that he bought the property and built his home there, with intentions of having it run on solar power. (Tr. 74-78, 95-96)

On or about August 11, 2020, the MS sales representative came to Applicant's home. Applicant testified that the sales pitch included a discussion of the solar equipment's power consumption, monthly cost, overall price, and other aspects of the proposed contract. Applicant agreed to sign the contract after discussing it with his wife. (AE W; Tr. 74, 78-79, 193)

Applicant testified repeatedly that he did not sign a contract. He said he attempted to sign on the sales rep's tablet computer screen but was not certain that he completed a signature. (AE W; Tr. 77-79, 84-85, 119-120, 136, 193) He also acknowledged that he made assumptions about how other signatures on the contract got there: "These were all assumptions I had made." (Tr. 84) However, in his interrogatory response, he said a "contract was entered for purchase and installation of a solar [equipment] system." (GE 5 at 10; Tr. 193)

Applicant also said he wanted installation of solar equipment at a higher kilowatt (KW), "Tier 2," level. This would generate more power than needed for the home's use. He was of the understanding that the amount of the contract was about $46,000 for the requisite solar power equipment for the increase in power generation. He also said he was not given a copy of the contract at the time. (Tr. 80)

Applicant provided a signed copy of the "Solar Equipment Installation Contract" between himself and MS. It is electronically signed by MS's chief financial officer (CFO) and initialed by Applicant, on August 11, 2020. (AE X, of which AE Y is a duplicate) The total amount to be paid to MS is listed as $33,524, through a third-party lender, finance company D. (AE X at 1) Applicant acknowledged that he viewed a copy of the contract electronically. (AE Z)

Applicant had three days to cancel the contract, after he signed it on August 11, 2020. The cancellation page is unsigned. (AE X at 8) Subsequent cancellation by the customer, or if the customer otherwise prevented MS from completing the installation, would lead to reimbursement to MS "in full for the cost of materials, labor, and services provided up to the date and time of cancellation." (AE X at 3)

Applicant would also be in breach of the contract if he failed "to make any scheduled payments on time, in full, and otherwise in accordance with this agreement." AE X at 3) If he failed to pay the "third-party finance company pursuant to the terms of [Applicant's] agreement with them, [he] may be subject to any of the terms and remedies set forth in that agreement." (AE X at 3) The agreement with finance company D is not in the record.

A few days later, on or about August 14, 2020, a workman from MS came to inspect Applicant's home and take photos. Applicant was told to empty his attic. (AE W; Tr. 77-79, 193-194)

AE II is a permit application to City S regarding the solar panel installation project. It is signed electronically on August 18, 2020, by both Applicant and an MS representative. Both signatures are notarized. (AE II) There is also a "Notice of Commencement" signed by Applicant the same day, August 18, 2020. (AE S)

AE GG is an application to the "architectural review committee" of Applicant's homeowners association (HOA). It concerns the solar panel installation by MS. It is signed electronically by Applicant, and dated August 24, 2020. (AE W at 6, AE GG, AE QQ) Applicant asserts that the application to the HOA is fraudulent, because he was the HOA president, and never signed it. (AE Q). There is no indication on AE GG that the HOA approved the application. (AE GG)

In late September 2020, MS workers called to schedule the installation of the solar equipment. Their initial appointment was postponed because they called the night before Applicant and his family were going out of town, but the appointment was rescheduled for soon thereafter. The workers appeared on the morning of September 29, 2020 (the day after Applicant returned) to install the equipment. Applicant acknowledged that he let them in his house, and knew they were there to install the solar and electrical equipment and did so. He also said they completed about 80% of the work. On October 2, 2020, they returned and "explained that everything was completed and all that was left was inspections and to activate" the equipment. (AE W at 2; Tr. 78-80, 83, 193-194)

MS emailed Applicant the final design of the project on October 16, 2020. (AE SS) The same day, MS completed the service upgrade, though he also said an MS electrician came and "downgraded" the solar panel system "to meet what they had installed." This led Applicant to contact an MS customer representative. (Tr. 80-83)

On or about October 19, 2020, Applicant asked City S officials whether there were any ordinances restricting the number of panels to be installed. He was told there were none, and that it was up to the contractor and engineer to verify State 1 building code compliance. (AE TT; Tr. 85-86) The same day, he emailed MS, asserting that MS had made "false and untrue" misrepresentations about what MS was able to do under local ordinances. He asserted that various electronically signed documents showed "fraud" by MS, "as I never agreed to a lesser system for any reason. . . . At this time, this matter is indefinitely on hold." (AE TT; Tr. 90-92)

Applicant essentially asserts that he agreed, or intended to agree, to a contract for installation of a solar panel system of higher kilowatt (Tier 2) capacity, for about $46,000, and not the contract for about $33,500 at issue here. He also asserted that the solar panel equipment was not saving him enough money and was producing less power than expected, as it was not a "Tier 2" system. In essence, this was the beginning of his dispute with MS, since he believes MS installed the lower-level system (at the lower price) without his permission. He acknowledged that City S had approved both plans. (AE AA, AE CC, AE DD; Tr. 84-90) He said that he was the victim of a "bait and switch" by MS (albeit one involving less money, for a lesser system, than he thought he had agreed to, not more). (Tr. 92)

However, the record does not contain a signed contract for a more expensive solar panel system (of about $46,000), and Applicant said he did not have one and never received one from MS. (Tr. 137-138) He also denied signing a contract for the $33,500 solar equipment, notwithstanding his initial on the installation contract and a letter from Bank K. (AE B at 57, AE X at 7; Tr. 138)

Applicant asserted that MS was being investigated criminally for their conduct. (Tr. 92-93; AE C). He also said he filed complaints with State 1 regulators and the Better Business Bureau (BBB) in about October 2020. (AE W; Tr. 94, 97-98, 206-208) By this time, he said, MS was non-responsive to his concerns. (Tr. 98-100)

On November 9, 2020, Applicant received a request from finance company D to electronically sign a "Customer Installation Agreement." (AE B at 17; Tr. 100-101) The same day, he emailed MS regarding his dispute about various aspects of the equipment's installation, production, and other specifications. MS responded with answers to his questions. He was dissatisfied and requested more updates later in the month. (AE QQ, AE RR)

On December 20, 2020, Applicant emailed MS to say, "Thanks for all the hard work, couple things [I] need confirmation on to wrap this up." (AE EE) MS wrote back to say:

> To confirm, we are covering the cost for the meter and inspection as per usual course of business. The previous agreement is not voided, this is just an addition to it, being that the price was not affected. If the (3) panels do not meet the documented production we will add more at our cost, as discussed. (AE EE; Tr. 106-107)

Applicant forwarded this email exchange to finance company D on February 22, 2021. (AE EE)

On January 6, 2021, finance company D sent Applicant a "Notice of Completion," and wrote him that "We have been informed by your Contractor that the system ('Improvements') described below have been installed. . . . [Accordingly], we disbursed payment to your contractor. Please be aware that your payment obligations under your loan will begin." Applicant was directed to contact finance company D with any questions, and "if your improvements have not been installed or if the work has not been completed" in accordance with the contract. (AE HH, AE OO; Tr. 103-106)

On January 12, 2021, Applicant emailed MS and requested a copy of the "purchase agreement." (AE KK) On January 24, 2021, he emailed finance company D regarding ongoing issues with MS. He said, "The remaining solar panels were installed as of Jan 12, 2021. At this time, the solar panels were physically 'powered up' but there seemed to be an issue of whether the power was 'flowing back to the grid.'" He noted that he had contacted MS numerous times in recent days regarding final inspection, and installation of the solar meter by the local power company (LPC). He said the solar equipment was causing an increased power bill. (AE B at 21-23, AE LL, AE CC; Tr. 101-112, 213) Applicant requested that billing be placed on hold until the LPC confirmed that the system was complete. He said, "I'm pretty sure if something is not completed, if you're leaving out the primary components that make it go, it's like getting a cart with no wheels." (Tr. 109) On January 27, 2021, finance company D wrote back to say they would contact MS "to address outstanding issues." (AE LL; see also AE EE, discussed above)

At his hearing, Applicant acknowledged, however, that MS installed additional panels on about January 12, 2021, as agreed, and that, "if that doesn't do it, we'll add more." (Tr. 107-108) At this point, Applicant asserted, his power bill significantly increased. (Tr. 108-109; AE CC) He believed it was MS's responsibility to complete the inspection and to contact the LPC to finalize matters so excess solar power could be absorbed by the LPC. (Tr. 111-112)

On February 2, 2021, having not heard a response from finance company D, Applicant asserted that there had been a breach of contract, consistent misrepresentations, and failure to properly activate the service. On that basis, he stated he intended to file a lawsuit. (AE B at 26; Tr. 110-113) He renewed this statement on February 20, 2021. (AE B at 30) This resulted in a call with a finance company D representative two days later. (AE B at 31-36; Tr. 114-116) It is unclear when Applicant first received a bill for his first payment. He testified it might have been in February or March 2021, but also said he did not recall seeing a bill. (Tr. 113-115, 117-118)

Applicant also acknowledged giving either finance company D or Bank K his bank account number so he could be billed automatically, though he cancelled that before automatic payments were to begin. He also insisted that he never signed the contract. (Tr. 84-85, 119-120, 137-138, 212-213)

On March 1, 2021, Applicant emailed finance company D (while also referencing Bank K) to assert that the "Notice of Completion" he had received on January 6, 2021, had been falsified and that finance company D was engaged in deceptive and unfair trade practices. (AE B at 39; Tr. 116-117)

On March 12, 2021, he brought the matter to the attention of City S. Their representative responded that day and told Applicant that "there has not been [an official] Certificate of Completion generated for this permit. . . . Your home has not had any inspections, so a Certificate cannot be generated." (AE V) Revised plans, if any, were to be submitted by the contractor to City S, and that if there were any updated plans "newer than the approved/revised plans from October 2020, the Contractor is required to submit those for review. . ." (AE V; AE B at 41-43; Tr. 119-122)

On March 22, 2021, Applicant emailed finance company D seeking a status update. (AE B at 45). The same day, they emailed Applicant to inquire about whether the solar equipment was operating. He emailed back and said that: (a) the installation was not complete after seven months; (b) the architectural plans were not approved by City S officials; (c) an inspection had not been performed; (d) a Certificate of Completion had not been issued by City S; and (e) a Tier II solar meter had not been installed by the LPC. (AE MM; Tr. 122)

On or about March 23, 2021, Applicant received a text from an MS representative seeking to schedule a service call. She requested to speak to him the next day. (AE WW)

On March 30, 2021, Applicant emailed finance company D about prior conversations he had with Mr. F, who was evidently part of upper management (of either finance company D or Bank K). Having not heard anything further, Applicant said. "My formal demand for forfeiture of the system remains intact." He also demanded a response in writing. (AE B at 46) Applicant asserted that Mr. F told him that Bank K had paid MS in error, but Applicant did not corroborate this assertion in writing. (Tr. 126-131)

In late February 2021, Applicant had filed a complaint with the Better Business Bureau. (AE B at 37 and possibly AE W) MS responded on April 2, 2021, as follows, in pertinent part (AE T):

> [Applicant's] assertions of wrongful conduct are incorrect. We have tried to correct [his] confusion in this matter. [MS] designed [Applicant's] system to achieve a certain level of production for which he signed off on. It is clear during the consultation there was much back and forth on the desired system and the production from the system. It turned out he was confusing the size of the system with the production from one of the quotes he received during the consultation. He was, in fact, already receiving

> substantially more energy than he was concerned with. Even with this explanation, [Applicant] still insisted he was correct and did not allow us to complete the job.
>
> In order to ensure the customer was satisfied, even though his assertions were misguided, [MS] went so far as adding multiple panels free of charge. [Applicant] accepted this gesture . . . [and obtained] the necessary insurance for the additional panels. [After MS added the panels, MS] has tried to attain the final steps necessary in order to energize [Applicant's] system, but [he] has refused to let [MS] on his property except when he has received panels free of charge. If [Applicant] would simply allow us to complete the last stages of the project and have the appropriate inspections done to achieve completion as required by his local utility, he would be able to see the level of production that the system can generate and the savings he can realize.
>
> [MS] has not falsified documents in this matter and has not abandoned his construction project as [Applicant] has stated. To the contrary, [MS] has followed the normal course of construction and will seek the final approvals at the appropriate time in order to energize the system. . . . [MS] remains prepared to complete the final work in order to energize the system. (AE T)

The Better Business Bureau noted that the matter was closed in its files and would be documented as "Answered – the business addressed the issues within the complaint, but the consumer remains dissatisfied." (AE T) Applicant flatly asserted that MS's position was false. (Tr. 201-203)

On April 6, 2021, Applicant had another conversation with Mr. F. He emailed finance company D memorializing his version of the conversation and requested that Mr. F's statements be put in writing. (AE R) He testified that Mr. F told him Bank K would repossess the equipment. This, Applicant said, would leave his home looking like "Swiss cheese." He therefore asked City S to revoke the construction permit the same day, due to what he called MS's "failure to perform and fulfill its contractual obligation(s)." (AE D, duplicated at AE U) The permit was revoked by City S on May 7, 2021. (AE NN, AE UU; GE 5 at 11; Tr. 198-199)

On April 7, 2021, Applicant wrote finance company D and Bank K (while also referencing Mr. F), offering "your companies one final opportunity to reconsider and amend the positions described yesterday in our conversation." (AE B at 48)

On May 17, 2021, Applicant responded to a letter he had received from Bank K, entitled "Concerning your Solar Loan and Security Agreement." He asserted that MS had abandoned the project, the contracted work was not completed, and the solar equipment remained "not active." He provided a copy of the revoked permit from City S. Applicant asserted that he had no financial responsibility for any funds Bank K had released to MS, based on MS's failure to complete the work. (AE E, AE B at 51-53; Tr. 132-135, 99-100)

On July 22, 2021, Bank K wrote Applicant again and advised him that, "By signing the Loan Agreement, you agreed to repay the loan in monthly installments." By failing to make payments when due, he was in default. As a result, Bank K exercised its right to request full payment of the loan amount due, then $34,395 in principal, interest, and fees. (AE B at 57; Tr. 135-139)

In August 2021, Applicant engaged with another entity, N, about this matter. What part N played is unclear, but he wrote them a long e-mail detailing his complaints and demands related to all parties. (AE B at 59-60, AE F; Tr. 122-123) He testified that he engaged the builder of his home to assess the cost of removing all of the solar panels and equipment and what condition the home would be in as a result. He said again that this would leave his roof like "Swiss cheese," with repair costs of about $60,000 to $70,000. (Tr. 123-124) He demanded that they fix the problems with the home and the solar panels. He construed their nonresponse as abandonment of the project under State 1 law. He regarded their equipment to have been "junk," or at least, non-operational solar equipment that they had abandoned on his property. (Tr. 125-126, 209-210)

On June 3, 2022, Applicant filed a "Notice of Commencement" in State 1 county court regarding installation of additional solar panels at his home. He listed the contractor as "Self." (AE PP)

In October 2022, Applicant paid a third party for licensing, permits, and an electrical inspection, though he testified that he did some of the finishing work himself. He paid about $1,000 out of pocket. (GE 5 at 12; Tr. 171-172, 185, 213) He asserted that he "took a loss" on the project because the fact that it was not operational or inspected meant he could not "sell this house and build another one" as he had planned. (Tr. 173-174) Inspection was approved in early November 2022 (AE JJ; GE 5 at 28-31; Tr. 195-197) Later that month, the LPC granted Applicant "Permission to Operate," and thus allowed him to offset the energy he purchases from the LPC and to sell to the LPC any excess solar power he generates but does not use. (GE 5 at 12; AE FF)

There is no indication in the record that Applicant reported to MS, finance company D, or Bank K that he had taken steps unilaterally to make the solar panel system at his home licensed, operational, and connected to the LPC. (See discussion of AE YY, below).

Applicant now has a working solar panel system in his home. It is fully licensed and approved by City S and other appropriate authorities. He considers that he owns the system: "As far as I'm concerned, I own it. They abandoned it." (Tr. 216) There are no liens in place and he has not been sued for payment on the contract. The solar panel system is operated by company E. (GE 5 at 28; Tr. 166-171, 184, 213-216, 225)

Applicant has not paid any money to MS, finance company D, or Bank K and does not intend to make any payments. He acknowledged that MS provided the labor and the equipment and that he let them into his home to do the work. (Tr. 170-173) He does not believe Bank K should have been involved, and "if anything, they should pay me for me having to endure all these years that I put up with" all the issues with the project. (Tr. 216-217)

Applicant provided transcripts of several voicemails he had received from MS in February, May, and June 2023 about their interest in engaging with him to "get your project moving forward." (AE P) He also provided recordings of these voicemails. The voicemails are not in the record, but the parties agreed to their general subject matter, and they are "marked" as a placeholder as AE AAA. (Tr. 22, 63-67) (AE O contains copies of Applicant's phone logs from this general timeframe as well).

On May 16, 2024, a week before the hearing, Applicant received a letter from Bank K: "Action Requested regarding your [Bank K] Solar Loan ending in [XXXX]." Bank K was "trying to determine the operating status of your solar equipment purchased with the above-referenced solar loan." Based on the bank's "understanding that your solar equipment may not yet be fully operational," Bank K offered to have the equipment "reviewed in an effort to make it operational." Bank K said it "may pay for reasonable costs associated with attempting to make it operational, but to do so, we request your cooperation and assistance." Applicant was requested to contact Bank K "no later than June 15, 2024." (AE YY; *see also* AE XX and AE ZZ)

Applicant's assertions

In discussing AE YY, Applicant asserted that Bank K had "acknowledged in writing that the system is not done." In fact, the bank had not acknowledged this, and was seeking to determine the solar equipment's operating status. (Tr. 164; AE YY) Applicant had not contacted Bank K by the time of his hearing, a week later, though he said he intended to do so. (Tr 164-166, 221-223) He said, "I think it would -- the responsible thing to do, of course, is to follow up on that letter. . . . That's a sense of integrity for me." (Tr. 226-227)

Applicant disputed that he signed a contract with MS and that he signed a loan agreement with either finance company D or Bank K. (Tr. 84-85, 119-120, 136-139) He asserted that his initial on the signature page of the contract was not valid, as, he said, it had been inserted after the fact by MS. He questioned the validity of the signature because there is no timestamp. (AE A, AE X) He said he did not receive a copy of the contract until October 2020. (Tr. 148-152)

Applicant also questioned why Mr. F is noted as having received a copy of the contract, on March 22, 2021. (AE A at 5; AE Z) As noted above, they began interacting in late March 2021, a few days after this, and it is reasonable to infer that Mr. F wanted to see a copy of the contract in question before he spoke to Applicant. Despite this, Applicant asserted that Mr. F had "essentially known and been part of this since day one" and was involved "at the beginning" with the "fraud" perpetrated upon him by MS, finance company D, and Bank K. (Tr. 153, 155)

Applicant also asserted that several documents were falsified and evidence of fraud. (AE BB, GG, AE HH, AE II; Tr. 155-156) Believing this, he contacted the police. He said the matter is still being investigated but no charges have been filed. (Tr. 156-158, 160, 185, 227-228; AE C) He also consulted several attorneys. He believes that MS has abandoned the project under State 1 law. (Tr. 124-125, 141-142, 162, 184, 209-211) He does not believe he has to pay on the debt. He believes he has acted reasonably and has

found “an alleged series of frauds.” (Tr. 161-162) He intends to see the matter through to the end. (Tr. 225, 232-236)

Applicant said he challenged the debt with credit bureaus in March 2022. He documented a dispute he filed in August 2023. However, the credit bureaus responded two weeks later and said that the status of the solar equipment loan debt with Bank K was “Not Changed.” (AE BBB; Tr. 176-183) AE BBB was printed on May 23, 2024, the day of the hearing. The next day, Applicant submitted credit reports dated May 24, 2024, noting in an email (AE CCC) that the debt to Bank K was not listed on any of them. (AE DDD, EEE, FFF)

On August 2, 2024, I reopened the record to ask Applicant (1) whether he had responded to Bank K’s May 15, 2024 letter (AE YY), (2) if so, whether they responded, and (3) what, if anything, happened next. (HE V)

On August 7, 2024, Applicant submitted a lengthy email in which he answered my questions and provided additional information. In essence, he stated that: (1) No, he had not contacted Bank K by their requested June 15, 2024 deadline, or at any time since; (2) Bank K had not pursued additional contact with him, either; and (3) in answer to the question, “What, if anything, had resulted after that with respect to the [Bank K] loan at issue in this case?], his answer (which I am paraphrasing) was, essentially, “Nothing.” (AE GGG)

In his email, Applicant also explained his rationale for not responding to Bank K. Essentially, it was because: (a) the debt in the SOR no longer exists; (b) he is a person of fine character and is a good father; (c) the letter from Bank K says he owns the solar equipment system; (d) cooperation with Bank K is voluntary and not obligatory; (e) the offer to speak by phone was “suspicious”; and (f) he addresses his other financial obligations (like medical debts) responsibly and has excellent credit (as supported by the attachments to AE GGG). He closed by asserting that the process has been a hardship and a detriment for him personally, professionally, and financially. (AE GGG)

Policies

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

The AGs 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(c), 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 national security eligibility will be resolved in favor of the national security." Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following AG is potentially applicable:

(b) unwillingness to satisfy debts regardless of the ability to do so.

This case involves a single past-due debt, of $34,264, owed to Bank K. (SOR ¶ 1.a), a loan Applicant incurred to finance installation of solar power equipment at his home, in late 2020. The debt is listed on his September 2022 CBR as being in collection to a solar equipment loan company. The debt is also listed as past due to Bank K on a

May 2023 CBR and as charged off by Bank K on April 2024 CBRs provided by both parties.

The Government has therefore established its *prima facie* case, notwithstanding Applicant's denials of responsibility for the debt. SOR ¶ 1.a is established by the record evidence. including Applicant's admissions and testimony, and by credit reports and very recent correspondence from the creditor. AG ¶ 19(b) applies.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;
>
> (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.

In August 2020, Applicant signed a valid contract for MS for the purchase and installation of solar equipment at his home, for about $33,500. When MS representatives came to his home to install the equipment in late September 2020, he let them in to do the work. The company installed the equipment with its own labor and services. Ever since, Applicant has consistently disputed the specifications, the licensing, the permitting, and the suitability of the equipment for solar operations in his home. In 2022, he took unilateral steps to do what he believed was necessary to make the equipment operational, and he spent about $1,000 of his own money to do so. He asserts that he owns the solar panel equipment. He's probably right. But the problem is he hasn't paid for it. There is no evidence that MS has "abandoned" the equipment at his home, or that he owes them nothing. Quite the contrary. Indeed, the record reflects that several times in 2023, MS representatives called him about the project. There is no indication that he responded. Applicant owes money to MS, or, more accurately, on the loan he signed agreeing to finance the project – a loan now owned by Bank K, as alleged in SOR ¶ 1.a.

Applicant's loan obligation is ongoing and unresolved. The debt appears on multiple credit reports from shortly before the hearing, and the creditor, Bank K, sent him a letter for the purpose of "trying to determine the operating status of your solar equipment

purchased with the above-referenced solar loan." As he confirmed in his post-hearing response (AE GGG), Applicant nonetheless did nothing to reengage with Bank K, despite having said that he would do so during his hearing testimony. The debt, while isolated, is also ongoing and continues to cast doubt on his current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

The fact that the debt at SOR ¶ 1.a no longer appears on Applicant's credit reports does not preclude its consideration as a current security concern. It is also a continuing course of conduct, since it is not clearly established that it is resolved. The fact that the debt is not reflected on credit reports from the day after the hearing does not indicate that the debt has been resolved, no longer exists, or is no longer Applicant's responsibility. Absence of a debt on a credit report "is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

Further, while actual fraud, established by substantial evidence, could provide mitigation in appropriate circumstances, "possible fraud," is not a sufficient basis for finding mitigation. ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012) In this case, Applicant's allegations that several of the documents are "fraudulent" or are evidence or proof of fraud are based on nothing more than his own speculation and vague, conclusory assertions. There is no evidence that the debt at SOR ¶ 1.a is due to circumstances beyond Applicant's control, or, at this point, that his actions to address it are reasonable.

Applicant has a right to assert a reasonable dispute as to whether MS completed its obligations under the contract. He might, arguably, have a claim for reduction of the money owed on the loan (now over $34,000) based on the estimated $1,000 in later expenses he incurred to bring the equipment up to code, and to make it licensed and operational. But he does not have a right to pay nothing for working solar equipment in his home. He has almost certainly breached the contract he signed with MS (AX at 3) and he has not paid anything he owes on the financing loan now with Bank K. He has the equipment and he has the money. In essence, he is benefitting from unjust enrichment. His irrational position suggests an indifference to the proper satisfaction of legal obligations. This, in turn, calls into question his willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. ISCR Case No. 18-02914 at 4 (App. Bd. Jan. 8, 2020). AG ¶ 20(e) does not apply.

AG ¶ 20(d) simply does not apply to the facts of this case. Believing that MS has abandoned its equipment at his home, and having made no payments whatsoever, Applicant has never undertaken anything close to a good-faith effort to pay on the loan he undertook to finance the project. While his efforts to resolve the matter may have been reasonable at one point, that has not been the case for some time.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

> (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 have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's long career as a well-compensated and highly regarded employee of defense and government contractors. I considered the circumstances of the debt at issue here and the fact that it is isolated, as well as the fact that Applicant makes a good salary and can afford to pay the debt. This cuts both ways, because he simply has chosen not to do so. He believes he is in the right, but his position at this point is untenable and unreasonable, since he has the equipment and owes on the loan.

There is also the matter of how Applicant treated the debt during the security clearance application process. He did not disclose the debt on his SCA. He did not discuss or reveal the debt during his background interview until he was confronted about it. And when that occurred, he said that the debt was settled and closed. In his January 2023 interrogatory response, Applicant reported that the debt was paid. None of that was true, though he may have subjectively believed it to be the case.

There is no allegation of falsification or lack of candor under the Personal Conduct guideline, so I cannot consider this evidence as disqualifying conduct. But I can consider it in weighing mitigation and under the whole-person concept. Here, this evidence does not help Applicant establish that he would do the right or the reasonable, responsible thing in protecting classified information. Applicant has not met his burden of establishing that he has addressed the debt responsibly and that he is a suitable candidate for eligibility for access to classified information.

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 financial considerations security concerns.

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:	Against Applicant

Conclusion

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

_____
Braden M. Murphy
Administrative Judge