



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



In the matter of:)
)
) ISCR Case No. 22-02287
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey T. Kent, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2024

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) in June 2022. On December 9, 2022, and February 13, 2023, the Department of Defense issued to Applicant identical Statements of Reasons (SOR) detailing security concerns under Guideline F. On April 26, 2023, the Defense Office of Hearings and Appeals (DOHA) issued an Amended Statement of Reasons (SOR Amendment) detailing security concerns under Guideline F including those concerns alleged in the SOR plus additional delinquent debts. These actions were taken under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on February 21, 2023, and the SOR Amendment on May 16, 2023, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on January 23, 2024. On April 8, 2024, DOHA issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on April 30, 2024. Department Counsel offered Government Exhibits (GE) 1 through 10. Applicant testified and offered Applicant's Exhibits (AE) A through D. The record was held open until May 14, 2024, to permit Applicant to submit documentary evidence. Applicant's requests for extensions of time to submit documents were approved to July 1, 2024. He timely submitted AE E through H. I sustained Applicant's objection to GE 9 (summary report of his August 2022 interview with a government investigator). GE 1 through 8 and GE 10, and AE A through H were admitted into evidence without objection. The record closed on July 15, 2024. DOHA received the hearing transcript (Tr.) on May 9, 2024.

Findings of Fact

In Applicant's answers to the SOR, as amended, he admitted the allegations in SOR ¶¶ 1.a-1.g, 1.i-1.k, 1.m, and 1.n, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 39-year-old cost analyst employed by a federal contractor since April 2022. He was employed by various non-federal entities from August 2011 until being hired for his current position. He was unemployed for a few months in 2017, from February to September 2019, and from May 2020 to June 2021. He has more than 150 college credit hours but has not earned a degree. He never married and has no children (GE 1; Tr. 51-53, 91-95)

Applicant attributes his financial problems to unemployment, the COVID 19 pandemic, financial support for his disabled mother since at least 2012, and occasional financial support to his extended family. He said from 2015 until the start of the COVID 19 pandemic, he was doing fine until he lost his job. He filed Chapter 13 bankruptcy cases in 2021 and 2022 after being unemployed from May 2020 to June 2021. His financial circumstances have improved since he was hired by a federal contractor in April 2022. His priority is to continue to advance in his current job and to address his debts starting with the debts alleged in SOR ¶¶ 1.j-1.l. (GE 1 at 35-36; Tr. 36-39, 48-65)

The evidence concerning the SOR allegations is summarized below:

SOR ¶¶ 1.a-1.b: Chapter 13 Bankruptcies filed in February 2021 and April 2022, and dismissed in March and July 2022, respectively. Applicant admitted the allegations. (Answer) The February 2021 bankruptcy petition listed a \$22,214 secured claim for a 2018 sedan and \$133,591 in unsecured nonpriority claims. (GE 3 at 32-41, 53-54) The April 2022 bankruptcy petition listed a \$22,283 secured claim for a 2018 sedan and \$155,986 in unsecured claims. (GE 2 at 32-43, 53-54) The February 2021 bankruptcy petition was dismissed in March 2022 because Applicant failed to comply with direction

of the court, and the April 2022 bankruptcy petition was dismissed in July 2022 because he failed to provide required documents. (GE 3 at 74-77, GE 2 at 71-74)

Applicant testified he filed the bankruptcy petitions in 2021 and 2022 to prevent repossession of his vehicle. Both cases were dismissed in part because he could not afford the required payments. Once he realized he would be getting his current job with a defense contractor, he decided he would not finish the bankruptcy, to sell his vehicle, and decided to start to address the debts on his own. (Tr. 33-37, 57-65)

SOR ¶ 1.c: Chapter 7 Bankruptcy filed in June 2015 and discharged in September 2015. Applicant admitted the allegation. (Answer) The bankruptcy petition listed \$8,560 in secured claims and \$158,592 in unsecured nonpriority claims. (GE 4 at 19-25, 36) The debts were discharged in September 2015. (GE 4 at 54) Applicant testified he filed the Chapter 7 bankruptcy petition so he could get his finances in order and so he could purchase a vehicle. He said a car salesman told him that he “would have to file a Chapter 7 bankruptcy in order to get financing.” (Tr. 37-38, 65)

SOR ¶¶ 1.d-1.e: Chapter 13 Bankruptcies filed in June 2010 and June 2011 and dismissed in April and September 2011 because Applicant failed to pay required filing fees. Applicant admitted both allegations. (Answer; GE 1 at 36) Court records for the 2010 case show unsecured claims totaling \$24,473 and secured claims totaling \$17,997, including a \$16,525 vehicle loan. (GE 6 at 10-11) Records of his 2011 case show unsecured claims totaling \$19,539 and a secured vehicle loan totaling \$21,235. (GE 5 at 8-9) Both petitions were dismissed because Applicant failed to timely pay filing fees. (GE 5-6)

Applicant testified he filed the bankruptcy petitions in 2010 and 2011 after he lost his job and fell behind on vehicle loan payments. He was not financially literate at the time and his mother advised him that filing for bankruptcy was probably his best option to prevent repossession of his vehicle. He needed the vehicle for transportation and to assist his disabled mother. He was inexperienced and did not understand the importance of procedural compliance. (Tr. 33-37, 64-65)

SOR ¶¶ 1.f, 1.h: failed to file federal income tax return, as required, for tax year (TY) 2020 and owed delinquent federal income taxes of about \$13,330 for TY 2020. Applicant admitted he failed to timely file a return for TY 2020, but denied he owed the delinquent income taxes. He claimed the debt was paid in November 2022. (Answer; Tr. 8-14; GE 1 at 36)

Applicant testified he filed his TY 2020 and TY 2021 returns in 2022, and that all delinquent taxes were paid in 2022. He submitted evidence showing he overpaid his TY 2021 federal income taxes by \$13,682 and that in November 2022 the IRS applied the overpayment to taxes owed for TY 2013 (\$5,923), TY 2017 (\$5,308), TY 2018 (\$1,323), and TY 2020 (\$688). The remaining \$441 was refunded to him. (Tr. 40-44, 97, 113-119; AE C, H) Applicant’s claim that his overdue federal taxes were resolved in 2022 is

corroborated by evidence he received a refund for TY 2021 after his overpayment for that tax year was applied to overdue taxes for other tax years.

SOR ¶¶ 1.g, 1.i: failed to file state income tax return, as required, for TY 2020 and owed delinquent state taxes of about \$1,148 for TY 2020. Applicant admitted both allegations. (Answer) He testified he filed a state income tax return for TY 2020 when he filed his federal income tax return in 2022, and that he set up a payment arrangement with the state for his tax debt. He submitted evidence the state approved a 60-month payment plan in January 2024, for a state tax debt of \$1,333, and with the first monthly payment of \$25 due on January 31, 2024. (Tr. 40-41; AE G)

SOR ¶¶ 1.j-1.l: indebted to a creditor for two accounts placed for collection for \$12,353 and \$6,413, respectively, and an auto loan account past-due in the amount of \$7,328 with a balance of \$21,967. Applicant admitted the allegations in SOR ¶¶ 1.j and 1.k, but denied the allegation in SOR ¶ 1.l noting he was working with the creditor and that the past-due balance had been reduced to \$4,801. (Answer) Credit reports from July 2022, April 2023 and April 2024 show the credit accounts alleged in SOR ¶¶ 1.j and 1.k as assigned in January 2019, with last activity or payment in June 2022 and March 2021, and charged off in the amounts alleged. (GE 7 at 8, GE 8 at 3, GE 10 at 11) A July 2022 credit report shows the auto loan account alleged in SOR ¶ 1.l with a past-due balance of \$7,328, last activity in June 2022, and a loan balance of \$21,967. (GE 8 at 4)

Applicant testified the debts alleged in SOR ¶¶ 1.j-1.l were a personal loan, a credit card, and a vehicle loan, and that the vehicle loan had been charged off. In September 2022, \$16,500 he obtained from sale of the vehicle was applied to the vehicle loan debt and reduced the balance to \$4,801. (AE B) He said the creditor is amenable to resolving the debts through a payment plan. He plans to set up a payment arrangement with the creditor for all three debts once he has sufficient funds available. He plans to address these debts before other delinquent consumer accounts. (Tr. 44-60, 83-85, 120-126) These debts are not resolved.

SOR ¶¶ 1.m-1.n: credit card accounts charged off for \$2,477 and \$705, respectively. Applicant admitted both allegations. (Answer) Credit reports from July 2022, April 2023 and April 2024 show the credit card accounts were opened in November 2018 and March 2019, with last payment or activity in June and July 2019, and charged off in the amounts alleged. (GE 7 at 4,10, GE 8 at 4-5, GE 10 at 9-10) Applicant has not communicated with the creditors and he plans to address both debts after he resolves the debts alleged in SOR ¶¶ 1.j-1.l. (Tr. 48, 83-85, 126) These debts are not resolved.

Applicant's financial circumstances have improved since he started his current job in April 2022. He initially earned about \$83,500 a year and now earns about \$87,500. (Tr. 53-54) He estimated his net monthly income at about \$4,700 after taxes. He uses his income to pay his current bills and assist his mother, and has little left over after expenses. His largest monthly expenses are rent (\$2,100) and his car payment (\$953). He pays for

his mother's gas, auto insurance and other bills as needed because her only income is about \$1,700 a month for disability. He also obtained a \$5,000 loan to assist her. He reports that he has almost no money in his bank accounts. He sought credit counseling before filing for bankruptcy in 2010 and received credit counseling on at least two occasions during the bankruptcy process since. (Tr. 80-90, 106-112, 128; GE 2-6)

On October 25, 2022, Applicant obtained a \$59,523 loan to finance the purchase of a car. The loan requires monthly payments of \$953 for 75 months and, as of April 18, 2024, he was current on payments and had reduced the loan balance to \$50,927. (GE 10 at 8; Tr. 85-87, 125)

A credit report dated April 18, 2024, shows two accounts not listed in the SOR as in collection for a total of \$1,900, but reflects no other delinquent accounts not alleged in the SOR. (GE 10) Applicant submitted a "FICO Score 3B Report as of April 4, 2024," which characterized his amount of debt as fair or poor, and his payment history as fair to very good, his amount of new credit as poor to fair, and his credit mix as very good or exceptional. (AE D) This report does not identify specific debts or show debt details.

Applicant submitted letters of recommendation from a former coworker and a current colleague who works for a federal agency. They commented favorably on his professionalism, trustworthiness, integrity, compassion, work ethic, and ability to overcome challenges. They also noted his commitment to and support for his family and others, his positive attitude, and growth as a person. His current colleague recommended Applicant without reservation. (AE E-F)

During the hearing, Applicant was informed of the importance of providing documentary evidence regarding his income tax filings and payments, debt payments, contact with creditors, and efforts to address or resolve his financial problems. (Tr. 99-106, 112-120)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense

decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions and the documentary evidence reflecting his bankruptcy filings, failures to timely file federal and state income tax returns or pay taxes due, and other delinquent debts alleged in the SOR establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems date back to at least 2010. From July 2010 to March 2022, he filed four Chapter 13 bankruptcy petitions, and each case was dismissed because he failed to complete required actions. He had a significant amount of debt discharged through a Chapter 7 bankruptcy in 2015. His most significant action on delinquent consumer debt alleged in the SOR was to apply the proceeds from the sale of a vehicle to reduce the balance of his delinquent auto loan in September 2022. The following month he obtained a \$59,523 loan to purchase a vehicle and has made monthly loan payments of \$953 since. There is no evidence he has made any payments on the remaining \$26,749 in delinquent consumer debt since October 2022.

AG ¶ 20(a) is not established. Applicant's financial problems are long-standing, ongoing, and were not incurred under circumstances making recurrence unlikely. His financial behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment, underemployment, and his family's financial problems were largely beyond his control. However, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) is not established. Applicant completed financial counseling, but his financial problems are not under control.

AG ¶ 20(d) is established for the Chapter 7 bankruptcy alleged in SOR ¶ 1.c because it was a lawful and reasonable measure to resolve his significant debts and to attain a fresh start.

AG ¶ 20(d) is not established for the Chapter 13 bankruptcies alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, or for the delinquent consumer debts alleged in SOR ¶¶ 1.j-1.n. Applicant can be given credit for initiating Chapter 13 bankruptcies as a means of being protected from creditors but also as a way of making them partially whole. That would, however, require that he adhere to the plan's payment schedule and other requirements. He did not do so on four occasions from 2010 to 2022. He has provided insufficient evidence to support a conclusion that he has initiated or is adhering to a good-faith effort to repay his creditors, or otherwise resolve the debts alleged in SOR ¶¶ 1.j-1.n.

AG ¶ 20(g) is established for the delinquent federal and state income tax returns and overdue income taxes alleged in SOR ¶¶ 1.f-1.i. Applicant filed his delinquent federal and state income tax returns for TY 2020 along with his TY 2021 returns in 2022. A credit from his TY 2021 federal income taxes was applied to and resolved his delinquent federal income tax debt for TY 2020 as well as tax debts from TY 2013, TY 2017, and TY 2018. He entered a payment agreement with the state in January 2024 to resolve his state tax debt of \$1,333.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant's age, education, employment history, character evidence, and honorable efforts to provide financial support to his family members, and that his financial problems were caused, in part, by circumstances beyond his control. I also considered his improved financial circumstances, and that he has paid some of his delinquent debts. However, he has not demonstrated a reliable financial track record of addressing delinquent debts. In October 2022, he incurred a \$59,000 vehicle loan debt when he had \$26,749 in delinquent consumer debt outstanding. Although he has made the required vehicle loan payments, he has not made a single payment on his delinquent consumer debt since. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns. This decision should not be construed as a determination that he cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a longer track record of financial responsibility, he may be able to demonstrate persuasive evidence of his security clearance worthiness.

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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraphs 1.f-1.i:	For Applicant
Subparagraphs 1.j-1.n:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge