



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



In the matter of:)	
)	
)	ISCR Case No. 23-00799
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2024

Decision

PRICE, Eric C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On April 21, 2022, Applicant submitted a security clearance application (SCA). On April 12, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under 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 responded to the SOR (Answer) on April 25, 2023, and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2024. On April 4, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on April 23, 2024.

Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant testified but offered no documentary evidence. The record was held open until May 9, 2024. He timely submitted Applicant's Exhibits (AE) A through E. There were no objections and GE 1 through 4 and AE A through E were admitted in evidence. DOHA received the hearing transcript (Tr.) on May 2, 2024.

Findings of Fact

The SOR alleges seven delinquent accounts totaling \$31,597. (SOR ¶¶ 1.a through 1.g) In his response to the SOR, Applicant admitted all allegations without explanation. (Answer) His admissions are incorporated in my findings of fact.

Applicant is 36-years old and has been employed by a federal contractor as an aerospace technician since April 2022. He worked as an automobile master technician, field service technician, pest control technician, or rigger from February 2012 until January 2022, except for periods of unemployment from January to April 2018 and about two months in early 2021. (GE 1; Tr. 32-47, 90-93)

Applicant was born in Jamaica, entered the United States in March 2007, and was naturalized in March 2021. He attended a motorcycle mechanic's school from December 2008 to August 2011. He married in September 2007, divorced in July 2022, and has one child, age 4. (GE 1; Tr. 32-36, 90-91, 110-111, 127-128)

Applicant attributes his financial problems to underemployment, unemployment, fraudulent charges of about \$500 to his bank account in 2017, COVID 19, his former wife's unemployment, relocation costs and child related expenses including child support (\$560 per month), divorce, emergency medical expenses of about \$500 in 2023 to treat injuries from an auto accident, and to his immaturity. In 2018, Applicant and his then pregnant wife relocated to a lower cost area near her mother, and he had to accept a lower paying job. He said he participated in a Debt Consolidation Program for about a year and then focused on paying off the largest debt first (SOR ¶ 1.g) which he now believes to be a mistake. He said everything has changed since his daughter was born in October 2019. He wants to pay his debts and be more financially responsible. He has researched debt resolution online but has not sought or received financial counseling. (Tr. 17-19, 30-53, 100-104; GE 1 at 45-51, GE 2 at 5-7)

Applicant said he worked with a debt consolidation company (DCC) in about 2019 and that he made payments to the DCC for about a year. After the hearing he submitted a contract with the DCC dated May 9, 2022. (AE D) The contract enrolled \$26,698 in debt including debts alleged in SOR ¶¶ 1.b-1.g, and required 48 monthly deposits of \$453 beginning May 13, 2022. He submitted no evidence of payments made under the contract to the DCC. (Tr. 119-124; AE D; GE 3-4)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: vehicle loan charged off for \$5,412. Credit reports from May 2022 and January 2023 show the auto loan account opened or assigned in May 2018, charged off, and with a balance of \$3,678. (GE 1 at 49-50, GE 3 at 3, GE 4 at 2)

Applicant testified he opened the loan account in 2018 and voluntarily surrendered the vehicle in late 2019 or early 2020 because he could not afford the required payments. The debt is the deficiency balance owed after the vehicle was sold at auction. The original loan was for about \$40,000. He has been aware of this debt since mid-2021. After receiving a letter from the creditor in about August 2023, he contacted the creditor to discuss a possible settlement. He could not afford the requested monthly payments (\$300-\$400) or the settlement offer (\$2,500). He has not contacted the creditor since. (Tr. 55-61, 105-107; GE 2) This debt is unresolved.

SOR ¶ 1.b: credit card charged off for \$5,286. Credit reports from May 2022 and January 2023 show the individual account was opened or assigned in June 2011, charged off, and with a balance of \$3,439. (GE 1 at 46-47, GE 3 at 3, GE 4 at 2) Applicant's contract with a DCC showed this account with a balance of \$3,439, as of May 9, 2022. (AE D at 15)

Applicant testified he used this credit card to pay medical expenses when he broke his collarbone in 2016. He set up minimum payments with a debit card to keep the card current but changed debit cards because of account discrepancies including fraud. He failed to update the delinquent account with the new debit card number. He was notified the account was delinquent in about 2020 but has taken no action to resolve or pay this debt because of insufficient income. (Tr. 66-67) This debt is unresolved.

SOR ¶ 1.c: credit account charged off for \$2,865. Credit reports from May 2022 and January 2023 show this individual account was opened or assigned in November 2012, charged off, and with a balance of \$2,865. (GE 1 at 45-46, GE 3 at 4, GE 4 at 2) Applicant's contract with the DCC showed this account with a balance of \$2,865, as of May 9, 2022. (AE D at 15)

Applicant disclosed this debt in his SCA dated April 21, 2022, and discussed it with a government investigator in June 2022. (GE 1 at 45-46, GE 2 at 5) He stated the financial issue began in about December 2019 and that he could not keep up with the payments because of Covid-19 and his newborn child. He testified he did not recall this debt but has considered obtaining a personal loan to pay off his delinquent debts. He researched how to contact creditors but has not contacted this creditor or taken other action to resolve this debt. (Tr. 67-70) This debt is unresolved.

SOR ¶¶ 1.d-1.f: credit cards charged off for \$2,539, \$2,475, and \$2,212, respectively. Credit reports from May 2022 and January 2023 show these individual accounts were with the same creditor, assigned or opened in January 2017, June 2016, and May 2019, charged off, and with balances of \$2,539, \$2,475, and \$2,025,

respectively. (GE 1 at 50-51, GE 3 at 4-5, GE 4 at 2-3) Applicant's contract with the DCC showed these three accounts with balances of \$2,539, \$2,475, and \$2,025, as of May 9, 2022. (AE D at 15)

Applicant said at some point he was making minimum payments with a debit card to keep the cards current but changed debit cards because of account discrepancies including fraud. He failed to update the account with the new debit card number and was notified the accounts were delinquent. He has not paid the debts because he was overwhelmed by marital problems and parenthood, and he was not in a good place mentally. (Tr. 67-70; GE 2 at 5-6) These debts are unresolved.

SOR ¶ 1.g: motorcycle loan charged off for \$10,808. Credit reports from May 2022 and January 2023 show this individual account was opened or assigned in February 2018 in the amount of \$10,808 or \$22,661, charged off, and with balances of \$10,403 and \$9,433, respectively. (GE 3 at 5, GE 4 at 3) Applicant's contract with the DCC showed this account with a balance of \$10,483, as of May 9, 2022. (AE D at 15)

Applicant testified he obtained financing of about \$22,661 to buy a motorcycle in 2018 and that he voluntarily surrendered the motorcycle later that year because he could not afford the payments. He said he made a few payments on the delinquent loan in late 2019 or early 2020. In about October 2023 the creditor contacted him with what he believed to be an offer to settle the debt for \$1,500, which he paid. He then learned the payment was not a full settlement but that it had reduced the delinquent balance. He felt discouraged and misled and has not contacted the creditor since. After the hearing he submitted proof of a \$1,500 payment on September 6, 2023, and a loan balance of \$7,933, as of April 23, 2024. (Tr. 61- 66, 107-113; AE A-C, AE E; GE 1 at 47-48) This debt is unresolved.

Applicant's financial circumstances improved after he started working his current job in April 2022. He was initially paid about \$30 per hour and now earns \$34.68 per hour or about \$72,000 a year in gross income. He enjoyed a surplus of about \$1,600 per month for six months in 2023 and had about \$4,000 in savings in July 2023. Injuries sustained in an August 2023 motorcycle accident rendered him unable to work for about 11 weeks. He received short term disability payments of about 70% of his pay for 11 weeks and since returning to work he has been living paycheck to paycheck. His net income is about \$4,000 per month and his fixed monthly expenses are about \$3,200 including rent, child support, and a vehicle loan payment (\$790). In February 2024, he obtained a \$28,400 vehicle loan to finance purchase of a 2018 model year truck after his 2007 model year auto suffered mechanical failure. He has less than \$10 in the bank and a 401K retirement account worth about \$26,000. He is considering obtaining a loan from his 401K account to resolve at least one SOR debt. (GE 4; Tr. 35-44, 74-84, 95-100, 126-127; AE E)

During the hearing Applicant was informed of the importance of providing documentary evidence of debt payments, contact with creditors, efforts to address or resolve his delinquent debts, and his financial circumstances. (Tr. 114-126)

Policies

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

"The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. 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." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt "will be resolved in favor of the national security." Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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. 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.

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence, including Applicant's admissions establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). 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; and

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

Applicant has a history of financial problems dating back to at least 2019. He has made some effort to resolve the largest debt (SOR ¶ 1.g); however, he has not provided evidence he has resolved or is resolving the other debts (SOR ¶¶ 1.a-1.f).

AG ¶ 20(a) is not established. Applicant's financial problems are longstanding and ongoing. He has taken limited or no action to resolve six of seven debts alleged in the SOR. He has not shown that his financial problems are unlikely to recur, and his financial behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's divorce, Covid 19, unemployment, underemployment, and reduced income while recovering from injuries sustained in an accident 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 has not sought or received financial counseling from a legitimate and credible source.

AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.a-1.f. Except for responding to the creditor's efforts to resolve the debt alleged in SOR ¶ 1.a in August 2023, there is no evidence Applicant contacted the other creditors. The only evidence he attempted to resolve the debts alleged in SOR ¶¶ 1.b-1.f is a May 2022 contract with a DCC but there is no evidence Applicant made any of the required payments to address those debts.

AG ¶ 20(d) is not fully established for the debt alleged in SOR ¶ 1.g. Applicant's payments reduced this debt from \$10,403 in May 2022, to \$7,933, as of April 23, 2024. His most recent payment, \$1,500 in September 2023, was made almost four months after he responded to the SOR. Since learning that payment did not resolve the debt, he has not made any additional payment or communicated with the creditor. The timing of an Applicant's actions, including repayment of delinquent debts, impacts upon the degree to which the mitigating factors apply. ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009).

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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered the entire record, including Applicant's work history and that his financial problems were caused, in part, by circumstances beyond his control. I also considered his limited resources, and that he has made some efforts to resolve his largest delinquent debt. However, there is insufficient evidence that Applicant has acted responsibly given his circumstances or that

he has developed a reasonable plan for repayment, accompanied by concomitant conduct. See, ADP Case No. 22-00180 at 3 (App. Bd. Apr. 22, 2024) citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). 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 security concerns raised by his delinquent debts. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

This decision should not be construed as a determination that Applicant 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.g:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Eric C. Price
Administrative Judge