



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



In the matter of:)	
)	
)	ISCR Case No. 23-01128
)	
Applicant for Security Clearance)	

Appearances

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

10/30/2024

Decision

MURPHY, Braden M., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 30, 2022. On June 13, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DCSA CAS issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 11, 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 May 22, 2024. On June 5, 2024, following consultation with the parties, DOHA issued a notice scheduling the hearing for June 17, 2024. The hearing was to take place virtually through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 6. Applicant testified and submitted documents he marked as Applicant's Exhibits (AE) A through N. All of the exhibits were admitted without objection. I left the record open until July 31, 2024, to allow Applicant the opportunity to submit additional information. On June 28, 2024, the day after the hearing, he submitted exhibits regarding his debt resolution efforts (AE O, AE P), a letter from the Department of Veterans Affairs (VA) regarding his benefits (AE Q), a 1994 document regarding a prior clearance (AE R), his DD-214 certificate of discharge from active duty (AE S), and documentation of numerous decorations, medals, citations, and certificates. (AE T). On July 8, 2024, he submitted four reference letters (combined as AE U), and on July 31, 2024, he submitted a personal financial statement, with a narrative explanation. (AE V) These documents, AE O through V, are all admitted without objection. DOHA received the hearing transcript (Tr.) on July 24, 2024. The record closed on August 1, 2024.

SOR Amendment

At the start of the hearing, SOR ¶ 1.c was amended at Department Counsel's request to correct a typographical error, adding the word "off" to the phrase ". . . on an account that was charged off in the approximate amount of \$18,316." (Emphasis added) The amendment was accepted without objection. (Tr. 11-13)

Findings of Fact

Applicant admitted the four debts in the SOR (¶¶ 1.a -1.d) with explanations and two narrative statements. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 48 years old. He earned a bachelor's degree in 2013 and briefly attended another college in 2016. He is now pursuing a master's degree. After two years in the National Guard (1993-1995) he served for over 23 years on active duty in the Army as a military policeman (1995-2018). He deployed to Iraq and Afghanistan. He was discharged honorably as a sergeant first class (E-7). After leaving the Army, he was unemployed for about a year. He worked as a military police instructor from August 2019 to September 2020. When that contract ended, he was again unemployed from October 2020 until November 2021. Since then, he has been employed as a trainer in a manufacturing plant for his current employer and clearance sponsor. His only marriage (2000 to 2019) ended in divorce. He has a son and a daughter, both in their 20s. He had a clearance in the Army, most recently granted in 2016. He lives in State 1. (GE 1, GE 5 at 8; AE R; Tr. 9-10, 31-34, 47-50, 67-68, 72, 105)

Applicant disclosed some delinquent debts on his SCA and discussed his debts at length in his August 2022 background interview. (GE 1 at 38-40; GE 2 at 6-8) The four SOR debts total about \$66,788. They are established by credit reports in the record, from June 2022, April 2023, and June 2024. (GE 3, GE 4, GE 6)

Applicant asserted in his Answer that his debts are due to his divorce, his retirement, and family members needing to move in with him. He said he acted in the best interests of his family. He was assigned to a base in State 2 in 2015, when he and his wife decided to divorce. He had plans to finance his retirement with real estate investments. His wife did not know about his purchases at the time. He was paying for two mortgages and an apartment, as well as other living expenses. He was the only person on the deeds and found he could not afford them. The judge in the divorce proceedings froze his retirement assets so he could not borrow against them to pay the debt. His divorce lawyer was also expensive and he could not afford to repair the rental apartment. He also asserted that most of the marital debts were assigned to him. (GE 5 at 7; Answer; Tr. 34-36, 87-88, 94-96)

Applicant provided his 2019 divorce decree and judgment and related documents, including a parenting plan, a child support order, and documentation of his military pay and TSP retirement funds. (AE A-E) Applicant sought to reduce his child support obligations after the final divorce order was signed, without success. (AE F)

SOR ¶¶ 1.a (\$18,986) and 1.c (\$18,316) are two accounts that have been charged off by the same creditor bank. (GE 3, GE 4) SOR ¶ 1.a is also listed as charged off on a recent credit report, but SOR ¶ 1.c is no longer listed. (GE 6) He was making payments before his divorce but after that he could not afford to make any debt payments until August 2023. (AE P; Tr. 54-56, 76-82, 108-109)

In August 2023, after the SOR was issued, Applicant enrolled both these debts in a debt repayment program. He has an offer to settle SOR ¶ 1.a (\$18,986) for \$5,697. He is to pay \$624 per month towards the debt program for them to use to negotiate with his creditors. The program has an estimated \$11,315 in total fees, towards which he pays \$150 per month, of the \$624 he contributes. As of the date of the hearing, he had made four \$475 monthly payments (\$1,899 total) with \$3,798 remaining. (AE G; Tr. 51-56, 76-82, 108-109) He also enrolled in another plan where he pays \$14.95 a month to a "legal club" for legal advice, financial protection, and financial education. (AE O)

SOR ¶ 1.b (\$20,504) is an account placed for collection by creditor C. (GE 3) Applicant was unsure what this debt concerned and did not recognize it. He believes it may be to the same creditor as for SOR debts 1.a and 1.c but he was uncertain. He has not reached out to the listed creditor and has not made any payment arrangements. (Tr. 56-57, 82-85, 101-102) It is listed on GE 3 and is unresolved.

SOR ¶ 1.d (\$8,982) is an auto financing account that has been charged off. (GE 3) In 2016 or 2017, Applicant bought a replacement vehicle for his college-aged daughter when her prior vehicle broke down on the interstate. Her mother was unable to help. He

co-signed the auto loan for the replacement car with his daughter but she fell behind on the payments. The replacement car was a lemon and needed major repairs. His daughter dropped the vehicle off at his house in about 2020 or 2021. He had it towed to an auto repair shop. Applicant and his daughter later had a falling out and they are no longer on speaking terms. However, he remains responsible for the debt, since he co-signed for the auto loan, now charged off. Applicant has not contacted the creditor to arrange payments. He regards this as his daughter's debt, though he acknowledged being a co-signer on the loan. The debt remains unpaid. Applicant owes an additional \$9,000 in repairs for the car. He said he is on an installment plan with the repair shop, and the car remains there. (Tr. 36-47, 86-87)

Applicant provided copies of numerous state and federal income tax returns, including federal returns from tax years 2016-2019 (AE M), state and federal returns from 2020 (AE H and I), federal returns from 2021 and 2022 (AE K and L) and documentation that a \$375 federal refund he received was transferred to address another, undefined federal debt (AE J); and that a State 1 tax debt execution was released in 2024. (AE N)

Applicant said that he has filed his tax returns appropriately. He hired tax professionals to file his returns and he said the first firm he hired did a poor job. He said he has now filed all his past-due returns but acknowledged that he still owes about \$14,000 in past-due federal taxes to the IRS for tax years (TY) 2016, 2018, 2020, and 2022, as of January 2024. He said he is paying \$200 a month on that debt since May 2024. (Tr. 57-66, 100) Applicant's federal income tax debt was not alleged in the SOR.

Applicant has an annual salary of \$74,000. (Tr. 50) He took an online financial counseling course after receiving the SOR. He said he intends to address his debts and pay them off. He said he was not prepared for the divorce or to be responsible for most of the marital debts. (Tr. 100-105) He is also caring for his elderly mother, his brother who is disabled after a serious medical incident, as well as his son. Both family members are on Social Security, but Applicant also contributes \$2,000 to their care monthly. (Tr. 66-68, 73-75; AE V) Applicant provided a personal financial statement (PFS) in which he listed \$10,189 in monthly income, \$6,692 in monthly life expenses, and \$2,800 in monthly debt payments, including a mortgage, two credit cards, and a credit union debt. It is not clear that he is making payments on the SOR debts, the debt repair service or his past due taxes. The PFS lists a monthly remainder of just under \$400. He asserts that unexpected expenses have kept him from addressing his debts. (AE V)

Applicant has a service-connected disability and receives a monthly disability benefit of about \$3,738 from the Department of Veterans Affairs (VA) as of December 2023. He also receives \$1,647 in military retirement pay. (Tr. 69-70 75; AE Q)

Applicant received numerous decorations and medals during his years in the Army. This includes the Defense Meritorious Service Medal, two Meritorious Service Medals, three Army Commendation Medals, the Joint Service Achievement Medal, six Army Achievement Medals, seven Army Good Conduct Medals, several unit awards, and

numerous appropriate service medals, ribbons, badges, and certificates. (AE S, AE T, Tr. 107) He testified that he had no punishments or reprimands in the Army. (Tr. 32)

Applicant said he has had high-level clearances in the past and understands the importance of rules and regulations. He acknowledges his financial issues and says he knows that resolving them takes time and resources. He said that he is working on addressing his debts. He asserted that he is honest and forthright. (Tr. 32, 47, 114-115)

Applicant provided four reference letters. Two are from retired military officers and two are personal friends. They all attested to his strong character, including his honesty, integrity, discretion, commitment, judgment, trustworthiness, reliability, and suitability for access to classified information. (AE U)

Policies

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

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of several variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

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

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

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant incurred delinquent debts when he became financially over-extended after his divorce in 2019. He also had purchased several properties as real estate investments for purposes of financing his retirement, but was not able to keep up with related expenses. The SOR debts are established by the credit reports in the record and by Applicant's testimony. AG ¶¶ 19(a) and 19(c) apply.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant fell behind on his debts due to poor real estate investments, his divorce, and helping out family members. To some extent, these were circumstances beyond his control. AG ¶ 20(b) therefore has some application. However, for full application, he must establish that he is acting responsibly under the circumstances.

Applicant is addressing the debts at SOR ¶¶ 1.a and 1.c through a debt repayment program. But he only joined that program after the SOR was issued. He also pays about \$250 a month in fees, money which might be better suited were it allocated directly towards payments to his creditors. He did not recognize the account at SOR ¶ 1.b and has taken no steps towards sorting out whether he is responsible for it. SOR ¶ 1.d, the auto financing account for the replacement car for his daughter, is also unresolved. Further, he owes an ongoing debt for repairs on that car. He also acknowledged about \$14,000 in past-due federal income taxes. Those debts are not alleged in the SOR, but their existence undercuts a showing that his debts are being resolved or are in the past, and do not suggest current financial stability. Applicant has not established that he has undertaken good-faith efforts to address his debts, or that he is dealing with them responsibly under the circumstances. AG ¶¶ 20(b) and 20(d) do not fully apply.

AG ¶ 20(a) does not apply. Applicant's debts are ongoing and not isolated. They continue to cast doubt on his current judgment, trustworthiness, and reliability. AG ¶ 20(c) does not fully apply. Applicant is participating in some form of recent on-line credit counseling, but his debts are not being resolved and are not under control.

AG ¶ 20(e) potentially applies only to the debt at SOR ¶ 1.b, which Applicant says he does not recognize. But he has taken no steps to determine his responsibility for the debt and has not met his burden of showing that he is not responsible for it.

Applicant did not establish that any of the mitigating conditions fully apply to mitigate the security concern demonstrated by his delinquencies.

Whole-Person Concept

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

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

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I credit Applicant's military service, his pursuit of an education, and his efforts to provide for his family members in times of need. But the debts remain largely unresolved, and Applicant has not yet undertaken a good-faith effort to address them through a track record of steady payments, despite other evidence of financial stability. If he does that in the future, he may demonstrate eligibility for access to classified information at a later date. But as of now, he has not met his burden of showing that he has mitigated the financial security concerns shown by his history of delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude he did not provide sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge