



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-02162
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2024

Decision on Remand

MASON, Paul J., Administrative Judge:

Applicant’s evidence in mitigation is insufficient to overcome the continuing security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On December 2, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 the adjudicative guidelines (AG) effective in the DOD on June 8, 2017. Applicant requested a decision be made in his case on the administrative record rather than after a hearing. The Government sent a File of Relevant Material (FORM) to Applicant on March 15, 2023. Applicant was allowed 30

days to respond to the FORM. Because there was no evidence to the contrary showing that Applicant changed his request from an administrative decision on the record, on August 22, 2023, to a request for a hearing, I issued a decision denying Applicant's security clearance eligibility.

On March 20, 2023, the law firm representing Applicant at the time, submitted a letter to the Defense Office of Hearings and Appeals (DOHA) requesting a hearing. The letter was sent to the Department Counsel who signed the FORM; whose office is in Woodland Hills, California. However, the letter was emailed to DOHA headquarters in Arlington, Virginia. The hearing request never reached Department Counsel or the Judge before the decision was issued. Based on their recognition that a request for hearing was submitted before the FORM response deadline, the DOHA Appeal Board remanded the case to provide a hearing for Applicant. Then, according to the Board's remand decision, the administrative judge is required to issue a new decision. His decision after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.130.

DOHA issued a hearing notice on November 13, 2023, for a hearing on December 5, 2023. The hearing was conducted by Teams video teleconference. After the conclusion of the hearing, the record remained open until December 19, 2023 to allow Applicant to submit additional documentation. DOHA received no exhibits. I received the transcript on December 15, 2023. The record closed on December 20, 2023.

Rulings on Evidence

On November 27, 2023, the Government resubmitted the exhibits to Applicant and the administrative judge; the Government remarked them as Government Exhibits (GE) 1-10, with the 10th exhibit being an additional credit bureau report (CBR) dated November 27, 2023, and marked GE 4.

Findings of Fact

There are 19 delinquent accounts alleged in the December 2022 SOR. All the accounts except for SOR ¶¶ 1.a and 1.b are credit-card accounts, finance accounts, three medical accounts, three pay day loans, a lease of tires and rims, and two cable bills. The total amount of debt is about \$17,665. The debts, including the 2012 federal tax debt (amount not posted in the allegation), became delinquent between the federal tax filing deadline in 2013 (SOR ¶ 1.b) and July 2022 (SOR ¶ 1.i). Applicant admitted that he owed the debts, and the Government credit bureau reports confirm his admissions. (Items 6, 7; Item 2 (Applicant's December 26, 2022 answer to the December 2, 2022 SOR))

Applicant is 33 years old. He received his high school diploma in June 2009. (GE 3 at 6) He received training in 2013 on how to handle a certain military vehicle. In 2017, he received personal training and certification from an international sports

organization. In 2018, he received training on the operation of a balloon surveillance system. (Tr. 7-10)

In 2012, Applicant began contracting with the Department of Defense. His first job overseas was as a security monitor and escort in a middle eastern country. In 2013, he provided sports coordinating services to the United State Air Force (USAF). As a heavy metal welder, in 2015, he provided services to the military. Then, he returned to the United States where he worked at a help desk. In 2017, he returned to the middle east where he was employed as a fitness program manager. (Tr. 10-13) Applicant was employed as a journeyman in April 2020, installing tracking devices for military vehicles. He is currently employed as a heavy equipment mechanic, maintaining and resetting vehicles that come in for repair. (GE 1 at 15; Tr 13-14)

Applicant has been married since October 2015. He has three sons, ages 14, 9, and 7. He has a five-year-old daughter. He has held a security clearance since 2012, and eligibility for a public trust position since May 2019. He indicated that he has received credit counseling assistance, but the only reference to counseling in the record is affiliation with two or three debt consolidation services. (GE 1 at 36-38, 48-49)

In his December 10, 2021 personal subject interview (PSI), Applicant explained the reasons for his financial problems. A top reason was that his two-family income was reduced to one income when his wife was unable to work for six years. He implied that he made poor financial decisions in the past, but he was becoming financially smarter. He acknowledged financial debts that he is trying to resolve, but he needs time. He took out loans in the past because of unexpected emergencies like car repairs. (Item 5 at 10; Item 8 at 11) While he was intending to begin resolving the accounts in early 2022, the delay was probably caused by his wife's 2022 surgery. (Tr. 66-69)

SOR ¶ 1.a – Applicant did not file his federal tax return for 2019. In his October 2021 electronic Questionnaire for Investigations Processing (e-QIP), he intended to file the return in 2022. In his December 2021 PSI, he acknowledged his failure to file the 2019 Federal return and stated again that he would file it in 2022. His reason for not filing was that during his deployment in the middle east, his friends told him that while on deployment he only had to file returns every five years. In his undated answer to the December 2022 SOR, he stated that he mistakenly believed he had three years to file returns. He intended to file the 2019 return no later than December 30, 2022.

At the December 5, 2023, hearing, the Government sought to amend the SOR ¶ 1.a by replacing the Federal tax year 2019 (which has been filed and is in the Government's possession) with Federal tax years 2018 and 2020. Accordingly, the allegation would read that "Applicant failed to file Federal tax returns for tax years 2018 and 2020" Documentation shows that a Federal tax return for 2019 was filed, whereas federal returns for 2018 and 2020 were not filed. Applicant understood and had no objection to the proposed amendment. The amendment was granted. (Tr. 24-26) Applicant's 2018 and 2020 federal returns were mailed on December 6, 2022. (See attachments to Applicant's December 26, 2022 answer to SOR ¶ 1.a.) Though he

understood the transcripts are the Internal Revenue Service (IRS) hard copy response to whether tax returns were filed and whether they are accurate or not, there are no IRS transcripts in the record. SOR ¶ 1.a is resolved against Applicant.

SOR ¶ 1.b – In his undated answer to the December 2022 SOR, Applicant indicated that he had no problem paying the 2012 federal taxes. However, he is still waiting on a Form 9465 from the IRS, and then he would structure a repayment plan. (Tr. 26; 38-43) With no account transcript for Federal tax year 2012 in the record, it is impossible to determine the action taken by Applicant to resolve the taxes for Federal tax year 2012. The 2012 taxes are still unpaid.

SOR ¶ 1.c – In his October 2021 e-QIP, the delinquent debt began as a pay day loan that he opened to cover the cost of emergency car repairs. The debt became delinquent in April 2021. (GE 8 at 2) He stated that in November 2021, he would pay debt in full. (GE 1 at 55) As of May 13, 2022, he affirmed that he had taken no action on the debt. (GE 5 at 4, 12) In his December 26, 2022 answer to the December 2, 2022 SOR, he claimed that he had reached a payment agreement and would start payments with the finance company beginning in December 2022. In his testimony at the December 2023 hearing, he claimed that the debt was paid and that he would provide post-hearing documentation to verify payment. (Tr. 27) He did not provide any post-hearing documents. The account is still unresolved.

SOR ¶ 1.d – A pay day loan became delinquent in January 2022. (GE 8 at 2) In his undated answer to the December 2022 SOR, Applicant indicated the creditor's agent informed him that the account had been sold to a collection agency. Once the agent called him with contact information he would pay the account. At the December 2023 hearing, Applicant advised he had paid the account and would be submitting post-hearing documentation which he failed to submit. The account is unresolved.

SOR ¶ 1.e – This is a phone company account that became delinquent in November 2020. (GE 8 at 2) Applicant stated in his December 26, 2022 answer to the December 2022 SOR that he was put on a payment plan to make four payments of \$191 a month to extinguish the debt. There is no evidence payments were made. At the December 2023 hearing, he claimed the account was paid and he would be sending verifying documents. (Tr. 33) There is no evidence the account was paid. The debt remains unresolved.

SOR ¶ 1.f – The pay day loan became delinquent in October 2018. (GE 5 at 5; GE 5 at 2) In his December 26, 2022 answer to the December 2022 SOR, Applicant claimed that he worked out a plan to pay off the account in five monthly payments of \$124. Applicant conceded at the hearing that he made no payments on the account. He has an offer to settle the account from the creditor for half the posted amount in the SOR. (Tr. 46-47) With no independent evidence of payments under a plan or offer to settle, the debt remains unresolved.

SOR ¶ 1.g – The debt to the college became delinquent in October 2019. (Item 7 at 3) Applicant indicated in his December 26, 2022 answer that he had established a repayment plan to begin in January 2024. At the hearing, he testified the account was paid. (Tr. 38, 44) The account is still unresolved because there is no evidence showing the account was paid or settled.

SOR ¶ 1.h The account became delinquent in December 2021. (GE at 3) Applicant stated he had a payment plan in place that called for monthly payments of \$130 for six months. (December 26, 2022 answer to December 2022 SOR) At the December 2023 hearing, Applicant testified that the account, which became delinquent in November 2021, was paid. (Tr. 34) The account is not satisfied.

SOR ¶ 1.i – This account became delinquent in November 2021. (GE 5 at 3) In his December 26, 2022 answer to the December 2022 SOR, Applicant claimed the debt was not sent to collection. He indicated he would start monthly payments on the account in December 2023. He testified that the account was paid. (Tr. 34-35) The debt is unresolved.

SOR ¶ 1.j – The account became delinquent in January 2021. (GE 5 at 3) In his December 26, 2022 answer to the December 2022 SOR, he stated that he would pay the account in January 2024. At the hearing, he claimed that he had a balance of \$62 remaining to completely satisfy the account, and that he would be paying that amount in two to three weeks. (Tr. 34, 49) Applicant supplied no post-hearing documentation to prove that the balance was paid off.

SOR ¶ 1.k – In May 2013, Applicant claimed that he paid the debt. (GE3 at 6) In his December 26, 2022 answer to the December 2022 SOR, he claimed that he paid the debt and it was removed from his credit report. At the hearing, in addition to claiming that he paid the account, he declared that he would be submitting post-hearing documentation for proof. (Tr. 34-37) Because no documentation was presented to shore up his claim, the account remains unresolved and unpaid.

SOR ¶ 1.l – This unsecured loan account became delinquent in July 2022. (GE 5 at 4) Applicant indicated that he had difficulty contacting the agent for the creditor, but would satisfy the debt by January 2023. (December 26, 2022 answer to December 2023 SOR) The debt has not been paid.

SOR ¶ 1.m – A medical account became delinquent in April 2021. (GE 6 at 3) Applicant probably did not have medical insurance when he received the emergency medical services. He noted that he disputed the debt and it no longer appears on his credit report. (Tr. 34-35) The account has not been resolved.

SOR ¶ 1.n – The account became delinquent in April 2019. (GE 6 at 5) In his December 26, 2022 answer to the December 2022 SOR, Applicant claimed that he would pay for the delinquent tires and rims account in January 2023. He disputed being

required to pay the account when he returned the merchandise after a week of use. (GE 9 at 7) He claimed he paid the account. (GE 1 at 52; Tr. 35) The matter has not been rectified.

SOR ¶ 1.o – This medical account became delinquent in February 2021. (GE 6 at 6) Applicant observed that this account and SOR ¶ 1.m are no longer on his credit report. He intimated that the missing accounts suggest that he no longer owes the debts. (Tr. 36) Applicant still owes the account.

SOR ¶¶ 1.p – This is a medical account that became delinquent in January 2016. (Item 6 at 6) Applicant indicated he disputed the account and it was removed from his credit report. (December 26, 2022 answer to December 2022 SOR) The account became delinquent in January 2016. (Item 6 at 4) The medical account has not been paid.

SOR ¶ 1.q – This cable account became delinquent in June 2021. (GE 6 at 6) In his December 2021 PSI, Applicant contended that he was unfamiliar with this cable bill and would try to get it removed from his credit report. (Item 9 at 8) In his December 26, 2022 answer to the December 2022 SOR, Applicant claimed he paid the debt in March 2022 and the account was deleted from his credit report. With no documentation, i.e., payment receipts, bank statements, or official documented disputes to the credit agencies or the specific creditor that indicate the account was paid or settled, closed, or disputed, the bill is still unresolved.

Applicant opened another credit-card account in April 2023. (GE 4 at 4) After the last payment activity on the account in August 2023, it was charged off in October 2023. The amount of the charge off was \$167. (Tr. 55-58) The account is not alleged in the SOR and will not be used independently to deny his security clearance application. However, the conduct will be used to assess Applicant's evidence in extenuation, mitigation, or changed circumstances. ISCR Case No. 03-20327 at 4 (App. Bd. (Oct. 26, 2006).

GE 2 is documentation from the Defense Information System for Security (DISS), which is a repository for personnel security, suitability, for the Department of Defense military, civilian and contractors. The DISS report reflects that Applicant received a wage garnishment in September 2019 for child support of \$57 a month from the state with no ending date. Applicant believes this is reimbursement he is required to pay the state for providing medical services to his children. (Tr. 62-65)

While Applicant's wife was bearing his children, she experienced serious blood issues that caused headaches and balance issues preventing her from working for about six years. In 2022, she had two embolisms requiring an additional surgical procedure. She has resumed employment and currently works in a support position at a behavior hospital for at risk young women. (Tr. 66-69)

Applicant has used a written budget and a mental budget. He contends that he called every creditor to set up payment plans. He moved from a house to an apartment to reduce expenses. The record was kept open until December 20, 2023, to allow Applicant to submit the documentation he referred to during the hearing. (Tr. 66-74) No documented evidence was received.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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

Analysis

Guideline F, Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local tax returns or failure to pay annual Federal, state, or local taxes as required.

A person's practice of paying his voluntarily incurred debts and managing his tax obligations are private matters until evidence reveals that he is not paying his debts and handling his tax issues in a timely fashion. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit reports establish that the 18 of the 19 debts listed in the SOR became delinquent between April 2013 (SOR ¶ 1.b) and July 2022 (SOR ¶ 1.I). AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies because Applicant has provided no documented evidence to address the delinquent accounts. His unsupported claim of contacting all the creditors has no probative value unless supported by documented evidence of an attempt to resolve or settle the account.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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; 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.

AG ¶ 20 (a) does not apply since Applicant owed about \$17,665 in delinquent debt to 18 creditors or collection agencies in December 2022. On December 19, 2023, Applicant still owes \$17,665 to 18 creditors or collection agencies. His failure to take charge of his delinquent debt responsibilities continue to raise doubts about his reliability and judgment.

The medical problems that Applicant's wife suffered over six years in bearing their four children, rendering her unable to work during the period, were unforeseen conditions beyond Applicant's control. The loss of her income until recently had an adverse impact on his bill-paying ability. However, for the mitigating condition to be fully applicable, an applicant must provide credible documented evidence that he acted responsibly under the circumstances. Applicant receives limited mitigation under the first prong of AG ¶ 20(b). But he receives no consideration under the second prong of the condition. He should have taken some documented action to contact and negotiate payment plans with the creditors, or at least inform the creditors of his financial plight.

Debt consolidation services do just that, they consolidate debts. The record discloses no evidence demonstrating that Applicant has had financial counseling to learn the basic mechanics of managing financial obligations. The lack of evidence of a written budget negates applicability of the first and second prongs of AG ¶ 20(c). Applicant's delinquent debts are not being resolved or under control. AG ¶ 20(d) does not apply because Applicant is not engaged in a good-faith effort to repay his creditors.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has been married since 2015 and has four children. His jobs have taken him to the middle east to provide sport fitness services to American service

persons. He has also contributed his expertise to the military services as a heavy equipment mechanic.

Applicant has not furnished sufficient evidence to establish that his delinquent debts are being resolved or under control. Assuming that he is relying on a limitations statute to avoid responsibility because several of the listed debts have transferred to collection and removed from his credit report and rendered no longer legally enforceable by the creditor, the debt is still significant for security clearance purposes. See ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016)

Relying on the statute of limitations does not constitute a good-faith effort to eliminate delinquent debt. See ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish a case in mitigation, an applicant must present a “meaningful track record” of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that he has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant has no plan in place and has furnished no independent evidence of payments on the past due accounts. After a full review of the entire record from an overall commonsense point of view, Applicant’s ongoing financial problems have not been mitigated.

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.q:	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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge