



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 24-00194
)	
Applicant for Security Clearance)	

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro Se*

08/15/2024

Decision

HOGAN, Erin C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has made a good-faith effort to resolve his debts. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 22, 2023. On February 22, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS acted under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on March 12, 2024, and requested a decision based on the written record in lieu of a hearing. On April 23, 2024, the Government sent

Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 8. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on May 8, 2024. He was given 30 days to submit a Response to the FORM. He timely submitted a Response to the FORM. The case was forwarded to the Defense Office of Hearings and Appeals (DOHA) Hearing Office on May 29, 2024, and assigned to me on June 7, 2024.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case and are part of the record. Items 3 through 8 are admitted into evidence.

Findings of Fact

Applicant, age 39, is currently employed with a Department of Defense (DOD) contractor since January 2023. His highest level of education is an associate degree. He is married and has one child. He has never served in the military. (Item 3)

The SOR alleges Applicant has six delinquent debts, an approximate total of \$26,606. The SOR debts include: a \$10,469 judgment filed against Applicant on February 8, 2022 in favor of a financial company for a delinquent loan (SOR ¶ 1.a: Item 5 at 2; Item 6 at 3; Item 7); a \$4,524 delinquent credit account that was placed for collection (SOR ¶ 1.b: Item 5 at 2; Item 6 at 4); a \$2,048 debt that was placed for collection (SOR ¶ 1.c: Item 5 at 2; Item 6 at 4); a \$5,367 charged-off account (SOR ¶ 1.d: Item 5 at 3; Item 6 at 3); a \$2,861 delinquent credit card account that was placed for collection. (SOR ¶ 1.e: Item 4 at 5); and a \$1,337 delinquent credit card account that was placed for collection (SOR ¶ 1.f: Item 4 at 5; Item 6 at 4).

In his answer to the SOR, Applicant admits to all of the debts alleged in the SOR. He admits to being irresponsible in the past of acquiring debt when he earned less money. Over the past few years, he has worked to pay down the debts that he incurred as well as improve his credit. He previously worked in an industry that has, by its nature, a lot of up and down cycles. There would be constant pay cuts. Applicant now works in a field that provides a stable income. His wife has a better paying job. Their finances are more stable. (Answer to the SOR: Item 2)

Applicant provided an update on the debts alleged in the SOR:

SOR ¶ 1.a: \$10,469 judgment entered against Applicant for a loan: Applicant and his wife purchased a new home in July 2021. In September 2021, he took out this loan to help a friend with his business. His friend's business was not successful and he was unable to make payments to Applicant, leaving him responsible for the loan. His financial situation was further stressed when he received a 25% pay cut. He struggled to pay the bills. He focused on paying his mortgage, utilities, childcare, and groceries. He attempted to enter into a payment agreement with the creditor but they wanted him to pay the full balance which he could not afford. (Item 2) In his Response to the FORM, Applicant

provided proof that this debt was settled in full for the amount of \$4,187.93 on May 2, 2024. The debt is resolved. (Response to the FORM at 9-11)

SOR ¶ 1.b: \$4,524 credit card account placed for collection: Applicant says this original debt was from 2017. His low wages and increased childcare costs caused him to make a career change in late 2017. His income initially was reduced when he started his new job. He and his wife had to make choices on which debts to pay. They decided they were unable to pay this debt. (Item 2) In his Response to the FORM, Applicant said the debts alleged in SOR ¶¶ 1.b, 1.e and 1.f are managed by a law firm. This debt has been paid down to \$1,639.65 via an account garnishment. He agreed to pay \$300 a month until the account is resolved. (Response to the FORM at 3-4, 12)

SOR ¶ 1.c: \$2,048 account placed for collection: Applicant states this debt was incurred in 2021. He is on a payment plan for this debt. He pays \$146.35 monthly towards this debt. He began making payments in February 2023. He has paid a total of \$1,756 towards this debt. The current balance was \$1,463.40. He had nine payments remaining on the account. (Item 2 at 2-6) In his Response to the FORM, Applicant provided proof that he continued to make timely payments towards this debt. The balance is currently \$1,170.70. (Response to the FORM at 7-8)

SOR ¶ 1.d: \$5,367 charged-off account: Applicant states this debt was incurred in 2021, before his pay was cut. He is actively repaying this account. He entered into a repayment agreement in March 2024. He pays \$149.11 monthly towards this account. The amount is taken out automatically from his account. It will be resolved in February 2027. (Item 2 at 8-11) As of his Response to the FORM, he has made four payments on his payment plan. (Response to the FORM at 5-6)

SOR ¶ 1.e: \$2,861 credit card account placed for collection: Applicant incurred this debt in 2017. He could not afford to make the payments. (Item 2) In his Response to the FORM, Applicant said the debts alleged in SOR ¶¶ 1.b, 1.e and 1.f are managed by a law firm. He agreed to pay \$300 a month until the accounts are resolved. (Response to the FORM at 3, 12)

SOR ¶ 1.f: \$1,337 credit card account placed for collection: Applicant incurred this debt in 2015. He used this card to buy propane gas for their previous home. In 2015, they had a child and incurred medical bills. They could not afford to pay this bill. He is working on re-establishing a payment plan. (Item 2) In his Response to the FORM, Applicant said the debts alleged in SOR ¶¶ 1.b, 1.e and 1.f are managed by a law firm. He agreed to pay \$300 a month until the accounts are resolved. (Response to the FORM at 3, 12)

In his Response to the FORM, Applicant mentions that his delinquent debts were incurred over a four-year period from 2017 to 2021. Since 2021, multiple debts have been resolved. He has not incurred any new delinquent debts placed for collection since 2021. His financial situation is more stable and he is able to make consistent bill payments. He indicates his debts became delinquent after the birth of his son and the volatility of his previous career field. He endured several significant pay cuts which affected his ability to pay his debts. During the COVID 19 pandemic, he caught COVID on two occasions. He was unable to work and his pay was significantly reduced because he was only paid short-

term disability which was 60% of a 40-hour work week. He also lost a significant amount of overtime during this time.

In Response to DOHA Interrogatories, dated September 19, 2023, Applicant provided a copy of his budget. His net monthly income is \$5,846.75. His wife's net monthly income is \$2,450. Their total net monthly income is \$8,296.75. Their total monthly payments are \$6,846.12. They have a net monthly remainder of \$1,450.63. Their budget indicates that they live within their means. (Item 4 at 9)

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." (*Egan* 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." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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." (EO 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. (*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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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.

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's case. The SOR alleges six delinquent debts. The total approximate balance of the delinquent debt is over \$26,600.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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 in 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 problems and from a legitimate and credible source, such as a non-profit counseling service and there are clear indications that the problem is being resolved or under control; and

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

AG ¶ 1.a applies. While Applicant takes responsibility for his financial problems, he worked in a career field that did not provide a stable income. He could not forecast when his pay would be reduced. His finances were further complicated by his generosity in taking out a loan for a friend to help him start a business. He learned the hard way that these arrangements often do not work out. His friend could not pay him back so he was responsible for paying the debt. Applicant's change of career field eventually resulted in increased pay and financial stability. He is taking steps to resolve all of his delinquent accounts and has not incurred additional delinquent accounts. He has demonstrated that he is reliable, trustworthy and has good judgment.

AG ¶ 1.b applies. Applicant was unable to pay his debts as a result of a 25% cut in pay. He also suffered two bouts of COVID which resulted in a loss of income because he was unable to work. These were circumstances beyond his control. The birth of his child and his friend not paying on the loan he took out on his behalf were other factors that complicated his financial situation. The volatility of his former career field caused him to change his career field for a better paying and more stable job. He now earns a good income and was able to start resolving his delinquent accounts. He acted reasonably under the circumstances.

AG ¶ 1.d applies. Applicant initiated and is making a good-faith effort to resolve his delinquent debts. He resolved the debt alleged in SOR ¶ 1.a and entered in payment agreements with the creditors holding the debts alleged in SOR ¶¶ 1.b – 1.f. It will take several years, but he has been consistent with his payment plans, so far, and has the resolve and determination to resolve these accounts.

Overall, Applicant demonstrated that he has taken significant steps towards resolving his delinquent accounts. He met his burden of proof to mitigate the concerns raised under Financial Considerations.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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 I have considered the factors in AG ¶ 2(d). I considered Applicant's employment with a DOD contractor since January 2023. I also considered that Applicant incurred significant debt because his previous career-field was volatile. He endured significant pay cuts. He changed his career to a more stable and lucrative career field. He now earns sufficient income and is able to work out payment agreements with his creditors. He resolved one debt and is in active payment agreements with his remaining creditors. He has a plan in place to resolve his debts. He and his wife live within their means. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised under financial considerations.

Formal Findings

Formal findings 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:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Erin C. Hogan
Administrative Judge