



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



In the matter of:)
)
) ISCR Case No. 23-01028
)
Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq., Department Counsel
For Applicant: *Pro Se*

03/14/2024

Decision

BORGSTROM, Eric H., Administrative Judge

Applicant attributed his financial delinquencies to mismanagement or malfeasance by his former fiancée; however, he did not provide evidence to corroborate these claims, his claimed debt-resolution efforts, or to establish that he acted responsibly to resolve his delinquent debts. He did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 22, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). 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 implemented by the DOD on June 8, 2017.

In Applicant's June 14, 2023 response to the SOR (Answer), he admitted, with explanations, all 12 alleged debts. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On August 29, 2023, the Government was ready to proceed to hearing. I was assigned this case on November 28, 2023. On December 13, 2023, DOHA issued a notice scheduling a hearing by video teleconference for January 18, 2024. The hearing proceeded as scheduled. The Government proffered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5 without objection. Applicant testified and did not submit any documentary evidence. At Applicant's request, I left the record open until February 20, 2024, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on January 26, 2024. On March 11, 2024, Applicant submitted an email and four attachments, which I admitted as Applicant Exhibits (AE) A through E without objection. The record closed on March 11, 2024.

Findings of Fact

Applicant is 42 years old. He graduated from high school in 1999. Applicant has two children, ages eight and five. He was in a relationship with his children's mother from January 2014 until about March 2020. (GE 1; Tr. 22, 24-25, 33)

From January 2001 to April 2012, Applicant was employed full time as a technician with a private company. He was laid off in April 2012 and remained unemployed until June 2012. From June 2012 to November 2015, he was employed full time as a lead technician for a private company. He was laid off in November 2015 and remained unemployed until February 2016. Since February 2016, he has been employed full time as a field service technician with a DOD contractor. He was granted a DOD security clearance in October 2017. (GE 1; Tr. 22, 24, 27)

The SOR alleges financial considerations security concerns arising from 12 delinquent accounts totaling approximately \$69,205. In his Answer, Applicant admitted all 12 accounts. He claimed that he was paying one account (SOR ¶ 1.g.) at the time and that the remaining accounts were being paid through a debt-settlement program (DSP). He also claimed to have taken out a 401k loan to pay some of his delinquent accounts and to be putting his house for sale to resolve any other delinquent accounts. He provided no evidence to corroborate his claims. (Answer)

Applicant attributed his financial delinquencies to his relationship with his children's mother from about January 2014 until about March 2020. They became engaged and lived together from 2016 to March 2020. Applicant's fiancée handled the household finances, including bill payments. Applicant testified that she opened many credit-card and charge accounts in Applicant's name, often without his knowledge. During the hearing, he explained that he had been unfamiliar with the debts in SOR ¶¶ 1.a., 1.e.-1.h., and 1.k. until after the relationship had ended. In 2019, Applicant noticed a change in his fiancée, which he attributed to increased alcohol consumption, and at least one of Applicant's credit cards stopped working, alerting him to some financial issues. In late 2019 or early 2020, Applicant took a \$20,000 loan from his 401k account and a \$30,000 personal loan to settle or resolve some of his delinquent accounts. Applicant himself did not apply the funds to his delinquent accounts. Rather, he entrusted his fiancée to apply the loaned funds to his delinquent accounts, and he remained uncertain whether she actually paid the delinquent accounts as planned. Due to relationship issues, her alcohol consumption, and financial issues, Applicant moved out of their shared residence in March

2020, and he moved in with his parents. Both because Applicant's fiancée handled the finances and because he experienced some difficulty recalling his accounts and debt-resolution efforts, Applicant was an unreliable historian regarding his delinquent accounts. He did not provide any documentary evidence to corroborate his claimed debt-resolution efforts prior to 2022. (Answer; Tr. 28-29, 34-35, 46-50, 61-65, 82-84, 94)

Beginning in 2021, while living apart from his former fiancée, Applicant received correspondence and phone calls from creditors about his delinquent accounts. In November 2021, when purchasing a vehicle, Applicant was offered a high interest rate on a vehicle loan and shown a copy of his credit report reflecting several unresolved delinquencies. In January 2022, he met with an authorized investigator from the Office of Personnel Management (OPM) and reviewed the delinquent accounts later alleged in the SOR. In about April 2022, he borrowed approximately \$30,000 from his parents to settle six unalleged accounts discussed below. He continues to make the \$2,400 mortgage payment for the former family residence, and his former fiancée continues to reside there. Applicant's children split time living with their maternal grandmother and living with Applicant. In his Answer, Applicant explained that he intended to sell the family residence and use the estimated \$200,000 in proceeds to resolve his accounts. At the hearing, he testified that he needed to complete some repairs before putting the house on the market, and there was no firm timeline for the sale. As of his March 2024 post-hearing email, Applicant had not yet put the house on the market. (AE E; Tr. 26, 35, 38, 51, 68, 81, 88 89, 92, 97-98)

In August 2023, Applicant enrolled in a DSP by which he pays \$722 a month to a company that negotiates and settles Applicant's four enrolled accounts (SOR ¶¶ 1.a.-1.c., 1.f.). Applicant's monthly payment covers the DSP's fees and accumulates in an account from which settlement payments are made. Applicant provided documentation showing the four debts included in the DSP plan with \$412 paid to date towards settlement of SOR ¶ 1.f. Applicant testified that he only missed one payment to the DSP between August 2023 and January 2024, however; there is no documentary evidence showing payments beyond the \$412 noted above. (Answer; AE C; Tr. 36-41)

SOR ¶ 1.a. This account was placed for collection in about August 2020 in the approximate amount of \$20,703. Applicant enrolled this debt in the DSP discussed above; however, there is no documentary evidence of a settlement agreement or payments made to resolve this account. **This debt is not resolved.** (Answer; GE 2-5; Tr. 33, 36-41)

SOR ¶ 1.b. This credit-card account was opened in December 2014, became delinquent in about March 2020, and was charged off in the approximate amount of \$10,838. Applicant enrolled this debt in the DSP discussed above; however, there is no documentary evidence of a settlement agreement, or payments made to resolve this account. **This debt is not resolved.** (Answer; GE 2-5; Tr. 36-42, 54)

SOR ¶ 1.c. This credit-card account was opened in January 2019, became delinquent in February 2020, and was charged off in the approximate amount of \$8,205. Applicant enrolled this debt in the DSP discussed above; however, there is no documentary evidence of a settlement agreement, or payments made to resolve this account. **This debt is not resolved.** (Answer; GE 2-5; Tr. 36-41, 54-56)

SOR ¶ 1.d. This charge account was opened in October 2016 to purchase furniture. The account became delinquent in about February 2020, and it was charged off in the approximate amount of \$5,761. Applicant testified that he had believed he had paid or settled this debt using the funds from the 401k loan and a debt-consolidation loan incurred prior to March 2020. There is no documentary evidence of any payments or payment agreement to resolve this account. **This debt is not resolved.** (Answer; GE 2-5; Tr. 56-57)

SOR ¶ 1.e. This credit-card account was opened in September 2014, became delinquent in about March 2020, and was charged off in the approximate amount of \$3,105. He learned that this account had become delinquent in 2019 or early 2020, and he had believed this debt had been resolved with the funds he obtained from the 401k loan and the personal loan prior to March 2020. Since learning that this debt was not resolved back in 2020, he has not taken any further steps to resolve this account, because he is focusing on the four largest debts first. There is no documentary evidence of any payment agreement or payments made on this account. **This debt is not resolved.** (Answer; GE-2-5; Tr. 57-59)

SOR ¶ 1.f. This credit-card account was opened in March 2016, became delinquent in about January 2020, and was charged off in the approximate amount of \$1,186. Applicant enrolled this debt in the DSP and has made payments totaling \$412 towards settlement of this debt. **This debt is not resolved.** (Answer; GE 2-5; Tr. 36-41, 59-61)

SOR ¶ 1.g. This credit-card account was opened in August 2016, became delinquent in about April 2020, and was charged off in the approximate amount of \$992. Applicant made six monthly payments and resolved this account in November 2023. **This debt is resolved.** (Answer; GE 2-5; Tr. 37, 61-62)

SOR ¶ 1.h. This credit-card account was opened in October 2018 and was charged off in the approximate amount of \$8,796. There is no documentary evidence of any payment agreement or payments made on this account. **This debt is not resolved.** (Answer; GE 2, 3; Tr. 64-65)

SOR ¶ 1.i. This charge account was opened in June 2015 and was charged off in the approximate amount of \$4,840. Applicant testified that his then fiancée opened the account, and they both used the account. He claimed that she purchased a large television with this credit card at the time or just after their break-up. There is no documentary evidence of any payment agreement or payments made on this account. **This debt is not resolved.** (Answer; GE 2, 3; Tr. 65-67)

SOR ¶ 1.j. This charge account was opened in June 2016 and was charged off in the approximate amount of \$2,596. There is no documentary evidence of any payment agreement or payments made on this account. **This debt is not resolved.** (Answer; GE 2, 3; Tr. 68-73)

SOR ¶ 1.k. This credit-card account was opened in November 2019 and was charged off in the approximate amount of \$1,290. There is no documentary evidence of

any payment agreement or payments made on this account. **This debt is not resolved.** (Answer; GE 2, 3; Tr. 74-77)

SOR ¶ 1.i. This credit-card account was opened in January 2020, became delinquent in about August 2020, and placed for collection in April 2021 in the approximate amount of \$1,111. There is no documentary evidence of any payment agreement or payments made on this account. **This debt is not resolved.** (Answer; GE 2, 3; Tr. 77-78)

Applicant's November 2021 and January 2024 credit reports show six additional charged-off accounts, totaling approximately \$48,294, which were paid or settled between April and June 2022. Applicant testified that he used the 401k loan, a personal loan, and a \$30,000 loan from his parents to resolve these accounts. (GE 3-5; Tr. 51-53, 99)

Applicant's incomplete monthly budget estimated over \$5,162 in income and \$4,162 for his mortgage, car insurance, car payment, and DSP payment. He noted that the remaining \$1,000 went towards gas, groceries, and kids' activities, but he did not estimate a monthly remainder. (AE A)

Applicant does not pay any rent to his parents. When Applicant moved out in March 2020, he ended his fiancée's access to his checking account. He admitted, during his testimony, that he was aware of some of the accounts that his fiancée had opened in his name; however, he was unaware of their delinquency until much later. He had believed that his fiancée had paid off his delinquent accounts - to include SOR ¶¶ 1.d., 1.e., 1.g., and 1.j. - with his 401k loan and his personal loan; however, he took no steps to verify any payments. (Tr. 23, 42-43, 45-48, 80)

In addition to the other circumstances referenced by Applicant, he testified that he and his fiancée had received a financial grant to complete modifications on their residence to make it more accessible to those with disabilities. In about 2018, they hired a contractor whom Applicant believed performed poorly. They later hired a new contractor and charged \$12,000 in materials expenses to two credit cards (including SOR ¶ 1.j.) to correct the work. Applicant also claimed to have paid a lawyer approximately \$6,000 to file a claim against the first contractor; however, this lawsuit was later dismissed. There is no documentary evidence to corroborate Applicant's claims about the modifications, the use of the credit cards for the materials, or the attorney fees. (Tr. 68-73)

Whole Person

Applicant's coworker praised his "unwavering dedication," compassion, honesty, and integrity. Applicant has been rated a high performer from 2020 to the present, and he has favorable performance ratings since 2016 with his current employer. (AE B, D)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These 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 a number of 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse 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 for financial considerations 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

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's 12 delinquent debts, totaling approximately \$69,000, became delinquent between January 2020 and April 2021, and all but one account remain delinquent. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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 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 has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in [*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)], *supra*. "Any doubt concerning personnel being considered for access to classified

information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b). (ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013))

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is than an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Prior to the issuance of the SOR, Applicant settled six unalleged charged-off accounts. After the issuance of the SOR, he paid one account (SOR ¶ 1.g.), and he enrolled four accounts in a DSP; however, he has only provided documentary evidence of \$412 in payments towards one of the enrolled accounts (SOR ¶ 1.f.). Similarly, he has provided no evidence to corroborate his claims of financial mismanagement or malfeasance by his former fiancée. His claimed debt-resolution efforts are separated by long periods of inaction and are largely uncorroborated. He has not provided sufficient evidence to establish that his financial problems resulted from circumstances largely beyond his control, that he acted responsibly to address his delinquent accounts, or that he made good-faith efforts to address and resolve his accounts. Given Applicant's poor recollection and inconsistent statements about his accounts and the timing of his DSP enrollment, I was unable to rely on his uncorroborated testimony. More importantly, Applicant has not demonstrated that his finances have stabilized and that he has a grasp on his financial accounts. AG ¶ 20(d) applies only as to SOR ¶ 1.g. Applicant did not mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant 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(c), 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant is very well regarded for his work performance, honesty, integrity, and dedication. He attributed his financial delinquencies to mismanagement or malfeasance by his former fiancée; however, he did not provide evidence to corroborate these claims, his claimed debt-resolution efforts, or to establish that he acted responsibly to resolve his delinquent debts. He did not mitigate the financial considerations security concerns.

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.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraphs 1.h.-1.l.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge