



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



In the matter of:)
)
) ISCR Case No. 23-00573
)
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro Se*

11/26/2024

Decision

MASON, Paul J., Administrative Judge

Though the record shows that Applicant did not act on his delinquent debts and his delinquent tax issues until July 2023, after he received the Statement of Reasons (SOR) in June 2023, he experienced a serious medical condition beginning in 2016, lasting for about five years until sometime in 2020. His health problem was complicated by having his work hours steadily reduced during the period to two or three work hours per week by May 2024. In light of Applicant's progress in his debt management plan addressing 18 of the 19 debts listed in the SOR, combined with his resolution of his tax issues, he has mitigated the security concerns arising from the guideline for financial considerations. Eligibility for security clearance access is granted.

Statement of the Case

On August 25, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On December 15, 2022, he provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). He also provided a second PSI by telephone on December 21, 2002. The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility

(CAS) could not make the affirmative findings required for security clearance eligibility and issued to Applicant a Statement of Reasons (SOR); dated June 5, 2023, 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 provided his first answer to the SOR on September 19, 2023, and his second answer on February 19, 2024, with an attached credit report. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 30, 2024, for a Teams hearing on May 15, 2024. The hearing was held as scheduled. The Government's five exhibits (GE) 1 through 5 and Applicant's four exhibits (AE) A through D were admitted into evidence without objection. On May 31, 2024, Applicant submitted post-hearing documentation that have been separated into 14 exhibits labeled AE E through AE R. The exhibits, which were admitted into evidence, contain a payment history of almost all of the listed delinquent accounts. The payment history begins on March 22, 2018. DOHA received the transcript (Tr.) on May 24, 2024. The record closed on May 31, 2024.

Findings of Fact

There are 19 delinquent debts listed in the SOR. The total amount of debt is about \$62,589. In both answers to the SOR, Applicant admitted several of the accounts and denied others. He finally admitted all of the allegations.

Applicant is 64 years old and married to his second wife. He has two adult children from his first wife. Their ages are 41 and 39. He has one adult stepson, 43 years old. He received his high school diploma in August 1978. From September 1978 to October 1998, he served in the United States Army (USA) and received an honorable discharge. He took college courses between 1990 and March 1994, but did not receive a degree. (GE 1 at 9, 15, 18; Tr. 32)

From December 2020 to the present, Applicant has been employed as a systems engineer. From July 2011 to December 2020, he was senior systems administrator. From January 2000 to July 2011, he was a staff engineer. He has held a security clearance since 2004. (GE 1 at 10-15, 44)

In 2016, while working for his employer from July 2011 to December 2020 (GE 1 at 10), Applicant was hospitalized for a week because of a bacterial infection. In 2017, he returned to the hospital for medical treatment on three different occasions, apparently for the same bacterial infection. He was administered antibiotics. In 2018, he was treated again on two occasions, but the doctors could not locate the origin of the bacteria in his body. In 2019, the doctors found that the antibiotics did not work, and discovered that Applicant was deficient in vitamin B 12. Initially, he received injections of the vitamin, but currently takes the vitamin in pill form. (Tr. 30-32)

Applicant's work hours decreased when he discovered his medical condition in 2016. He abused his credit cards to pay his medical bills as his insurance only covered some of them. In 2020, his medical condition started to improve, but he was unable to successfully negotiate payment plans with his creditors due to decreased earnings. For example, from August 27, 2022, to the December 2022 PSI, Applicant was on a part-time or no-wage-earner employment status, meaning that he earned only about \$300 during the period. His earnings dramatically increased in 2023. (GE 2 at 4-5; Tr. 32-34)

In July 2023, within two months after receiving the June 2023 SOR, Applicant signed up with a debt consolidation service to chart a repayment arrangement with the listed creditors. Two days later in July 2023, he also hired a tax service to help him negotiate a successful settlement with the Internal Revenue Service (IRS) to eliminate his delinquent federal taxes for 2017. (Tr. 57-58; AE B, C, D) The repayment plan, which included almost all of the listed accounts was put into effect in October 2013, but plan payments began in September 2023. The total amount of debt in the SOR is \$62,589. The only listed creditor not addressed in Applicant's debt repayment plan is SOR ¶¶ 1.s. (AE A, G; Tr. 28-29)

In his December 2022 PSI, Applicant informed the OPM investigator that he would establish payment plans with the listed creditors in January 2023. He contacted the creditors earlier to negotiate settlements but could not meet their settlement terms. When the creditors did not agree to his offer of \$50 in monthly payments, he mailed the payments anyway to some of the creditors. Applicant's documentation shows that he made two payments in March 2018 to the creditor identified in SOR ¶¶ 1.a, 1.b, and 1.c. Since September 2023, he has made regular payments to 18 of the 19 listed creditors. (Tr. 28) See AE G, K.

When Applicant submitted his August 2022 e-QIP, he correctly disclosed that he owed the SOR ¶¶ 1.a and 1.b creditor but admitted that he falsely claimed he was making monthly payments to the creditor. (Tr. 36) He also did not disclose his delinquent debts to SOR ¶¶ 1.i, 1.j, 1.k, and 1.l on the August 2022 security application. When asked why he did not disclose these four delinquent debts, the only reason he provided was that he was not really thinking about the debts. (GE 2 at 9; Tr. 37-38)

SOR ¶ 1.a - This account became delinquent in October 2018. (GE 4 at 13) As noted earlier, Applicant claims he was making payments to the creditor. Though two credit reports reflect that the account had been charged off since at least 2020, the reduced delinquent balance from \$8,889 (March 2023 CBR) to \$7,326 (May 2024 CBR) indicates that Applicant made payments totaling \$1,563 during the period. (Tr. 39-41; GE 4 at 13; GE 5 at 4) Hence, Applicant receives limited credit for reducing the outstanding delinquent balance.

SOR ¶¶ 1.b, 1.c - In his February 2024 response to the SOR, Applicant claimed that these two accounts were included in his debt consolidation plan. The account numbers he provided do not appear anywhere in the printouts from the debt service covering the period September 2023 to May 2024. However, his debt plan shows regular

monthly payments of \$195 and \$32 for the period to the creditor that is identified in SOR ¶¶ 1.a, 1.b, and 1.c. (Tr. 28-29; AE G; Applicant's February 2024 response to the SOR)

SOR ¶ 1.d - The account (\$8,428) became delinquent in June 2019. In his response to the SOR, Applicant denied owing the collection agency because the account number was not in the system of numbers used by the original creditor. However, after investigating the account with this listed creditor and other listed creditors or collection agencies, he admitted owing the debt, and indicated that he included the account in his debt management plan. The plan paid the creditor approximately \$1,785 in nine monthly payments between September 2023 and May 2024, leaving a balance of approximately \$6,463. (AE G; Applicant's February 2024 response to the SOR)

SOR ¶ 1.e - The account became delinquent in September 2021. (GE 3 at 3) As with SOR ¶ 1.e, Applicant denied the account because the department store did not use the posted account numbers. However, after investigating the account with the collection agency, he admitted owing the delinquent account of \$4,922. His debt management plan made nine payments of \$109 from September 2023 to April 2024, leaving a balance of \$3,913. (AE G; Applicant's February 2024 response to the SOR)

SOR ¶ 1.f - The account became delinquent in September 2018. As with SOR ¶ 1.e, Applicant initially took issue with the account numbers but admitted responsibility for the account acknowledged that it had been placed in his debt plan. His documentation shows that his plan made nine payments of \$58 between September 2023 and May 2024, leaving a delinquent balance of \$1,496. (AE G; Applicant's February 2024 response to the SOR)

SOR ¶ 1.g - This account is resolved in Applicant's favor as there is no documentation or posted account number to support the validity of the account. The credit reports do not confirm the existence of the account. Applicant did not recognize the account. (Applicant's February 2024 response to the SOR) See GE 3, 4, and 5.

SOR ¶ 1.h - This account became delinquent in October 2017. (GE 5 at 7) Applicant ultimately admitted responsibility for the account and explained that it had been added to his debt plan. The plan shows nine monthly payments of \$73, leaving a balance of between \$6,255 according to Applicant's debt plan, and \$6,474 according to the credit reports. (AE G) See GE 5 at 7.

SOR ¶ 1.i - This account became delinquent in June 2018. (GE 3 at 6) Applicant admitted the collection account and that it was in his debt management plan. The plan reflects nine payments of \$15 for nine months between September 2023 and May 2024, leaving a balance of \$747. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.j - This account became delinquent in June 2019. Applicant admitted he owed this debt and that he had included it within his debt management plan. The plan made nine payments of \$46 between September 2023 and May 2024, leaving a balance of \$3,948. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.k - This account became delinquent in June 2019. (GE 3 at 3) Applicant admitted the debt was his responsibility and that he had included the delinquent account in his debt plan. His plan indicates that he made nine payments of \$45 between September 2023 and May 2014, leaving a delinquent balance of \$4,060. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.l - This account became delinquent in June 2019. (GE 3 at 6) Applicant admitted his responsibility for the account. His debt plan shows that nine payments of \$15 have been made between September 2023 and May 2024, leaving a delinquent balance of \$1,185. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.m - This account became delinquent in July 2018. (GE 4 at 5) Applicant admitted he was responsible for paying the account. His debt plan shows that nine payments of \$57 have been made between September 2023 and May 2024, leaving a delinquent balance of \$3,373. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.n - This account became delinquent in April 2020. (GE 4 at 11) Applicant acknowledged his responsibility for the account. His debt plan shows that nine payments of \$31 have been made between September 2023 and May 2024, leaving a delinquent balance of \$2,458. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.o - This account became delinquent in May 2018. (GE 4 at 10) Applicant initially denied the account because the account number did not appear in the SOR allegation. Nonetheless, he inserted the account into his debt plan. The printouts of his plan show that nine payments of \$50 have been made between September 2023 and May 2024, leaving a delinquent balance of \$3,129. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.p - This account became delinquent in September 2022. (GE 3 at 5) Initially, Applicant disputed the debt because the account number was not posted. However, he included the account in his debt and has made nine payments of \$51 under the plan, leaving a delinquent balance of \$2,274. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.q - This account became delinquent in June 2015. (GE 3 at 5) Applicant initially denied the account but after investigating the account with the credit-card service, he included it in his debt plan. The plan reflects that the creditor has received nine payments of \$30 between September 2023 and May 2024, leaving a delinquent balance of \$1,406. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1. r - This account became delinquent in October 2018. (GE 3 at 6) Applicant ultimately settled the account in June 2023. See attachment to February 2024 response to SOR from collection agency announcing settlement. (Applicant's February 2024 response to the SOR; AE G)

SOR ¶ 1.s - This account became delinquent in August 2019. Applicant denied owing the account because it "had dropped off with 0 (zero) balance." Applicant's statement is interpreted as the debt was removed by the pertinent statute of limitations making the debt no longer enforceable. Removal of the debt based on the statute does not eliminate the security significance of the debt for security clearance purposes. Seeking to avoid paying the debt because of the running of the statute does not match a good faith effort of repaying ones debts.

SOR ¶ 1.t - Applicant admitted that he did not file his federal tax return for tax year 2017. He has filed all tax returns. He filed a duplicate tax return on December 21, 2022. (Tr. 57) See attachment to Applicant's February 2024 response to the SOR; AE C, D.

SOR ¶ 1.u – Upon receiving the SOR in June 2023, Applicant retained a tax service in July 2023. After his tax service resubmitted the proper documentation to the IRS, the agency determined that Applicant owed no delinquent taxes. (Tr. 57-58; AE B, C, D)

Applicant's current financial status is that he works about two or three hours a week. In addition to his earnings, he receives a military pension of \$2,200 a month and Social Security of \$2,300 a month. He has two cars that are paid for. In September 2022, he completed mortgage payments on his house. (Tr. 59-61)

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 reaching a final determination. 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.

In the evaluation of the facts in this case, I have considered the following disqualifying and mitigating conditions under the guideline for financial considerations:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶¶ 19(a) and 19(c) apply because Applicant accumulated a delinquent debt history between 2017 and 2022. AG ¶ 19(b) does not apply as I conclude that Applicant has always been willing to pay his debts but could not because of an incapacitating medical condition. AG ¶ 19(f) applies to Applicant's failure to file his federal tax return and his failure to pay income taxes for tax year 2017.

AG ¶ 20 (a) is not established because Applicant still owes a considerable amount of debt to 18 creditors. However, there is no evidence showing frivolous spending by Applicant or taking on new debt after 2022.

Applicant deserves mitigation under the first prong of AG ¶ 20(b) because "the conditions that resulted in financial problems were largely beyond the person's control." He was hospitalized several times between 2016 and 2020 before the doctors finally determined what was wrong with him. The second prong of AG ¶ 20(b) "the individual acted responsibly under the circumstances," is given less mitigating weight even though his medical condition triggered a steady decrease in his work hours.

Though there is no evidence of formal financial counseling, it is apparent that Applicant gained invaluable insight in consulting his debt management service and the creditors as he established his debt management plan. (AE A, D) The existence of the plan provides encouraging evidence that Applicant's debts are being resolved. He receives some mitigation under AG ¶¶ 20(c) and 20(d). Applicant gains complete credit under AG ¶ 20(g) for filing his federal tax return and paying his delinquent taxes for tax year 2017.

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 furnished sufficient evidence to establish that he is paying down his delinquent debts. His promising record of payments convinces me that he will continue to make his monthly payments under the debt plan until the debts are satisfied. With the help of financial counseling, including how to create and utilize a budget, Applicant will be better able to control his expenditures. The counseling helps a person effectively monitor and account for his earnings and expenditures and control his overall finances. A failure by Applicant to heed this recommendation may lead to an immediate review of his security clearance eligibility.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish his 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, an 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) After a full review of the entire record from an overall common-sense and whole-person point of view, specifically the evidence from Applicant's current employer who has maintained his employment even though it is only two or three hours a week currently, his successful filing of the 2017 federal tax return and resolution of the 2017 federal tax liability, and his honorable discharge from after a 20-year military career in the USA, he has mitigated the financial considerations guideline.

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:	FOR APPLICANT
Subparagraphs 1.a-1.u:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge