



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



In the matter of:)
)
) ISCR Case No. 23-01165
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro Se*

08/30/2024

Decision

BORGSTROM, Eric H., Administrative Judge

After more than 14 years in lower-paying positions, Applicant secured gainful employment with a DOD contractor in December 2022. This employment was again interrupted due to clearance issues, yet Applicant continued his debt payments. His income does not permit him to address all of his delinquent accounts simultaneously, but he has consistently made payments on his delinquent accounts for over a year. Eligibility for access to classified information is granted.

Statement of the Case

On July 25, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The DCSA 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 August 7, 2023 response to the SOR (Answer), he admitted all of the delinquent accounts except SOR ¶ 1.b. He attached documentation of proposed

settlement plans for SOR ¶¶ 1.a., 1.e., 1.f., and 1.g. and a letter from his former spouse claiming liability for and payments on SOR ¶ 1.b. He did not provide any evidence of completed payments. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On October 3, 2023, the Government was ready to proceed to hearing. I was assigned this case on March 8, 2024. On April 3, 2024, DOHA issued a Notice of Hearing, scheduling a hearing by video teleconference for April 29, 2024. The hearing proceeded as scheduled. The Government proffered seven exhibits, which I admitted as Government Exhibits (GE) 1 through 7, without objection. Applicant testified and proffered three exhibits, which I admitted as Applicant Exhibits (AE) A through C, without objection. At Applicant's request, I held the record open until May 29, 2024, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on May 13, 2024. Applicant timely provided four exhibits, which I admitted as AE D through G, without objection. The evidentiary record closed on May 29, 2024.

Findings of Fact

Applicant is 56 years old. He did not graduate from high school but earned a certificate in automotive training in 1987. He was first married in 2005 and divorced in 2008. He married his second wife in July 2009, separated in June 2018, and divorced in November 2019. He has one 14-year-old child. (GE 1; Tr. 53, 83)

The SOR alleges financial considerations security concerns arising from seven delinquent accounts totaling approximately \$25,700. Applicant attributed his financial delinquencies to periods of unemployment and his marital separation. (Answer; GE 7; Tr. 60-61)

From February 2008 to June 2022, Applicant was employed full time as a cook for several successive restaurants and facilities. During the hearing, he outlined two periods of unemployment during this 14-year period. Following shoulder surgery in about November 2017, he was unemployed and without unemployment compensation until about February 2018. Applicant testified that disagreements or strains related to their household finances contributed to his marital separation. Although they separated in June 2018, he remained in their shared residence until April 2019, when he quit his employment and relocated to a different state to live with his mother. He remained unemployed and without unemployment compensation until about August 2019. As a cook, he typically earned about \$15-16 an hour. Prior to relocating in April 2019, he supplemented his income with a part-time position, earning about \$500 a month. (GE 7; Tr. 35-40, 51, 84, 90-91, 96-98, 126)

From June 2022 to December 2022, Applicant was unemployed as he awaited his employment with a DOD contractor. From December 15, 2022 to June 4, 2023, he was employed as a pipefitter for a DOD contractor. He was laid off from this position due to delays or ineligibility for a security clearance at the time. He remained unemployed for about six weeks. From July 2023 to November 2023, he worked for a private telecommunications company. Since November 2023, he is back working as a pipefitter with the same DOD contractor at a different worksite. (GE 1, GE 7; Tr. 35-40, 51, 126)

Prior to his marital separation, Applicant and his wife used a credit-card account (SOR ¶ 1.a.) for a cash advance to pay for some closing expenses on their home in 2017. A second credit-card account (SOR ¶ 1.b.) was for a retail store for home improvements and furnishings. He testified that he opened another credit-card account (SOR ¶ 1.c.) to pay some of the medical expenses associated with his 2017 shoulder surgery. Applicant was unable to maintain the monthly payments on the increasing credit-card balances, and the alleged accounts began becoming delinquent in early 2018. Applicant's relocation, lower-paying jobs, and periods of unemployment prevented him from addressing and resolving these delinquent accounts. Upon their divorce, Applicant assumed all but one of their joint accounts (SOR ¶ 1.b.), and his former spouse retained the marital residence. (Answer; Tr. 53-54, 86-90)

On December 7, 2022, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During his security interview, he admitted all seven alleged delinquent accounts (SOR ¶¶ 1.a.-1.g.). He explained that these accounts had become delinquent in early 2018 due to his separation and divorce. As of the interview, he had not made any payments or payment arrangements regarding these seven delinquent accounts as he was awaiting employment. (GE 7)

On March 7, 2023, Applicant responded to DOHA financial interrogatories. He claimed that he had made payment arrangements on one alleged delinquent account (SOR ¶ 1.a.). He provided documentation that he had paid three unalleged accounts, and he prepared a monthly budget. (GE 2)

SOR ¶ 1.a. This credit-card account was opened in May 2018 and was placed for collection in about June 2020 in the approximate amount of \$11,623. Between March 2023 and December 2023, Applicant made eight monthly payments of \$178 in accordance with a settlement arrangement. Although Applicant did not provide documentation of the eight payments, his April 2024 credit report reflects some payments and a reduced balance of \$10,014 (equivalent to eight payments). Payments stopped in December 2023 due to Applicant's change of employment; however, he restarted payments with the creditor in January 2024. Under the new payment arrangement, Applicant will address three delinquent accounts with this creditor (SOR ¶¶ 1.a., 1.e., and 1.f.), paying SOR ¶ 1.e. first. There is no evidence of any further payments on SOR ¶ 1.a. since December 2023. (Answer; GE 2-5; Tr. 58-72)

SOR ¶ 1.b. This credit-card account was opened in June 2016, became delinquent in about November 2019, and was charged off in the approximate amount of \$4,854. In his Answer, Applicant included a letter from his former spouse explaining that she was paying this delinquent joint account through her Chapter 13 bankruptcy case. The documentation submitted by Applicant does not establish payments on this account through the bankruptcy; however, Applicant provided a spreadsheet from his former spouse showing eight payments of \$754 made by her between September 2023 and May 2024. It is likely that these payments reflect her payments under the Chapter 13 bankruptcy plan. Applicant's April 2024 credit report lists the account owner for this account as "Terminated." (Answer; GE 3-5; AE G; Tr. 56, 79)

SOR ¶ 1.c. This credit-card account has been delinquent since December 2018 in the approximate amount of \$4,556. There is no evidence or any payments or payment arrangements on this account. Applicant explained that he cannot pay all of his delinquent accounts simultaneously and will resolve this account after he has completed his current payment plans. (Answer; GE 3-5; Tr. 94, 102-103)

SOR ¶ 1.d. This credit-card account was opened in July 2017, became delinquent in January 2022, and was charged off in July 2022 in the approximate amount of \$3,272. Applicant testified that he used this account to pay medical expenses associated with his 2017 surgery. Applicant has not made any payments on this account and plans to resolve this account after he has completed his payments on the first three accounts (SOR ¶¶ 1.a., 1.e., and 1.f.). (GE 3-5; AE G; Tr. 106-109)

SOR ¶ 1.e. This credit-card account was opened in July 2018 and was placed for collection in about June 2021 in the approximate amount of \$2,753. Applicant credibly testified that he has made eight bi-weekly payments of \$144 since January 2024. His April 2024 credit report reflects a reduced account balance of \$1,678, corroborating his claimed payments. The repayment plan was scheduled to conclude on this account in August 2024, and then payments would be applied to the other two collection accounts with this creditor (SOR ¶¶ 1.a. and 1.f.). (Answer; GE 3-5; AE A; Tr. 45, 62-67, 72-76, 110, 111)

SOR ¶ 1.f. This credit-card account was opened in July 2018 and was placed for collection in about June 2020 in the approximate amount of \$2,175. Applicant completed one \$61 payment in June 2023. He has made no more payments as he is paying this creditor to resolve SOR ¶ 1.e. first. (Answer; GE 3-5; Tr. 77-78, 111-113)

SOR ¶ 1.g. This credit-card account was opened in November 2016, became delinquent in about December 2019, and was charged off in the approximate amount of \$861. This account was settled for \$360 as of October 2023. (GE 3-5; AE B; Tr. 113-114)

Applicant's testimony reflects that he has about \$150 left over each month after paying his expenses. He earns \$23.59 an hour as a pipefitter. He is currently about one month behind on his vehicle loan payments, and he is an estimated \$2,800 in arrears on his child-support obligation due to his periods of unemployment. He has approximately \$300 in savings and approximately \$2,500 in a 401k account. He has not participated in any credit counseling. (GE 5; Tr. 40-47, 50, 121-123, 127)

Applicant explained that his debt-resolution efforts were delayed due to his lower-paying jobs and his former spouse prioritizing the payment of her accounts from their household income. After he relocated, a family member encouraged Applicant to apply for a position with the DOD contractor for which the relative had worked for decades. Applicant completed the necessary U.S. citizenship paperwork to apply for the position. The relative also advised Applicant to address his financial delinquencies to benefit his clearance eligibility. When he applied for the position with the DOD contractor, he was advised against filing bankruptcy due to possible derogatory clearance implications. In February 2023, Applicant resolved unalleged accounts totaling approximately \$868. (Answer; AE C; Tr. 115-119)

Whole Person

Applicant's pastor submitted a recommendation letter stating that he has known Applicant for 20 years and that Applicant is a responsible member of the church. Applicant's supervisor praised Applicant's willingness to learn and aptitude for the trade. He has had no disciplinary actions while employed with the DOD contractor, and he is a "valuable asset to the team." (AE D, AE E)

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 seven delinquent accounts total approximately \$25,700, and they became delinquent between early 20 18 and January 2022. 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;
- (d) the individual has 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.

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).

Between February 2008 and June 2022, Applicant was employed full time as a cook, earning about \$15-16 an hour. He was able to maintain his financial obligations until 2018, when increasing credit-card expenses - likely related to the 2017 purchase of a home, medical expenses associated with his 2017 surgery, and unemployment -- became unmanageable. These financial strains appear to have also impacted Applicant's marriage, and he was separated in June 2018. He experienced several periods of unemployment, due to surgery, relocation, and layoffs. Even after securing gainful employment in December 2022, he was laid off in June 2023 due to clearance issues. In November 2023, he resumed gainful employment, earning \$23 an hour. Even with this higher income, he has about \$150 remaining each month after paying his financial obligations.

Applicant resolved three unalleged accounts and one alleged account (SOR ¶ 1.g.), beginning in February 2023. His debt-resolution efforts began prior to receipt of the DOHA financial interrogatories and the SOR. Since May 2023, he has made regular payments on the alleged accounts, first on SOR ¶ 1.a. and then on SOR ¶ 1.e. He currently pays \$144 every two weeks and was scheduled to complete payment on SOR ¶ 1.e. in August 2024. Upon satisfaction of SOR ¶ 1.e., his automatic payments will be applied to the two remaining accounts with the same creditor (SOR ¶¶ 1.a. and 1.f.). He will then move on to the remaining delinquent accounts. While promises to pay are not equivalent to completed payments, Applicant's track record of payments extends from February 2023 to at least April 2024. Applicant is not required to make payments on all of his delinquent accounts. Rather, he has a reasonable debt-resolution plan, and he has taken significant steps in furtherance of this plan.

Given Applicant's tight monthly budget and multiple unresolved accounts, I cannot yet conclude that his financial delinquencies are unlikely to recur; however, he has established circumstances beyond his control and responsible, good-faith efforts to resolve his delinquent accounts. AG ¶¶ 20(a) and 20(c) do not apply. AG 111 20(b) and 20(d) apply.

As to SOR ¶ 1.b., Applicant provided a statement from his former spouse asserting responsibility for this delinquent account. Bankruptcy records show an ongoing Chapter 13 bankruptcy case involving Applicant's former spouse; however, the bankruptcy records do not definitively show that this account is being paid through the bankruptcy.

Nevertheless, the spreadsheet of Applicant's wife's \$754 monthly payments, which appear to have been transactions recorded by her bank, suggest ongoing bankruptcy payments. Given the totality of the record evidence, even if Applicant's former spouse does not resolve SOR ¶ 1.b. through the bankruptcy, Applicant has demonstrated a determination, and acted upon it, to resolve his delinquent accounts. Applicant mitigated 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 by his supervisor and pastor. After more than 14 years in lower-paying positions, Applicant secured gainful employment with a DOD contractor in December 2022. This employment was again interrupted due to clearance issues, yet Applicant continued his debt payments. His income does not permit him to address all of his delinquent accounts simultaneously, but he has consistently made payments on his delinquent accounts for over a year. I have no doubts as to his suitability to be entrusted to safeguard classified information. Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a.-1.g.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric H. Borgstrom
Administrative Judge