



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-04148
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 25, 2014. On December 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on January 21, 2016,¹ and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 16, 2016, and the case was assigned to me on February 2, 2017. On February 9, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 7, 2017. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted into evidence, without objection. I appended

¹ I considered that the answer is actually dated January 21, 2015, but given the record facts, I find that it is a typographical error.

Government's exhibit list to the record as Hearing Exhibit (HE) I. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted into evidence, without objection. At Applicant's request, I left the record open to April 5, 2017. Applicant timely provided additional documents that I admitted into evidence as AE J through Q, without objection. I appended the associated post-hearing email exchanges to the record as Hearing Exhibit (HE) II. DOHA received the transcript (Tr.) on March 20, 2017.

Findings of Fact²

Applicant, age 33, was married in January 2015.³ He has an eight-year-old son, who lives primarily with his mother in Colorado. Since 2013, he has shared a home with his wife, and her two daughters, mother, brother, and nephew; and his son when he is visiting.⁴ He honorably served in the U.S. Air Force from 2004 through 2010. He received a technical degree in motorcycle repair in 2008, and has taken college courses in pursuit of an associate's degree. Since February 2013, he has been employed as an aircraft mechanic with the same defense contractor with whom he was previously employed between July 2010 and May 2011. He currently maintains a security clearance.

In May 2011, Applicant relocated from state A to state B to be closer to his son who was living there at the time. While in state B, Applicant was underemployed and then became unemployed from October 2012 through February 2013. He was not eligible for unemployment compensation because he was fired by his employer.⁵ He resided in state B until December 2012 when he returned to state A to resume employment with his current employer. His scheduled start date of December 2012 was delayed to February 2013 due to security-clearance processing. He received a housing allowance of approximately \$1,000 per month while enrolled in school in state B between July 2011 and June 2012, which he used, in part, to pay child support and his son's medical expenses.⁶

The SOR alleges 33 delinquent debts totaling \$57,083. As Department Counsel conceded at hearing, the debt alleged in SOR ¶ 1.q was not established by the record.⁷ Nevertheless, Applicant provided in his post-hearing submissions a copy of a document

² Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, SCA (GE 1), and the summary of his subject interview (GE 2).

³ See also Tr. at 40, and 78-81.

⁴ See *also* Tr. at 79.

⁵ See *also* Item 2 at p. 5.

⁶ See *also* Tr. at 82, 85.

⁷ Tr. at 63-64, and 113; and AE N.

evincing that he paid the debt in full.⁸ In his SOR answer, he admitted to the following debts: SOR ¶¶ 1.a through 1.p, 1.r through 1.s, 1.u, 1.v, 1.x, 1.y, 1.aa through 1.gg.

Applicant resolved the debts alleged in SOR ¶¶ 1.a. (June 2016), 1.e (March 2017), 1.h (May 2015), 1.j (February 2017), 1.k (March 2017), 1.p (March 2017), 1.q (August 2011), 1.u (February 2017), and 1.gg (February 2017).⁹ The remaining 24 unresolved SOR debts include two automobile loans totaling \$23,586 (SOR ¶¶ 1.c and 1.r), nine medical accounts totaling \$5,020 (SOR ¶¶ 1.d, 1.f, 1.g, 1.l, 1.n, 1.y, 1.z, 1.ee, and 1.ff), a \$6,896 personal loan (SOR ¶ 1.b), five utility accounts totaling \$1,789 (SOR ¶¶ 1.i, 1.m, 1.w, 1.aa, and 1.bb), a \$99 credit-card account (SOR ¶ 1.o), a \$395 collection account of unknown origin (SOR ¶ 1.s.), a \$35 Department of Veterans Affairs (VA) overpayment (SOR ¶ 1.t), two court fees totaling \$1,385 (SOR ¶¶ 1.v and 1.x), a \$300 red-light camera ticket (SOR ¶ 1.cc), and a \$198 insurance account (SOR ¶ 1.dd). Applicant's credit report revealed two additional VA debts that were not alleged in the SOR totaling \$4,472.¹⁰

After the transmission broke on Applicant's truck in the summer of 2010, he fell behind on its loan payments due to the extra expenses he incurred to buy parts to fix it and to pay another loan on a replacement vehicle. Despite his plea for more time, his creditor repossessed it in September 2010 and charged off his account in the amount of \$6,027 (SOR ¶ 1.c). Since then, he spoke with the creditor once in about September 2016 to attempt to resolve this debt and then he intended to make contact again in early 2017 but never did. At his hearing, Applicant stated that he plans to make contact at some point to work out a monthly payment agreement.¹¹

After an accident that totaled his car in late 2007, the insurance provider for the driver at fault did not pay the claim to which Applicant was entitled. There remains \$17,559 of debt outstanding of the loan of the totaled car (SOR ¶ 1.r). Because he was not at fault, Applicant denies liability for this debt. Each time he has submitted a dispute of the charge, the debt is confirmed as valid. He does not plan to pay this debt, but is still researching options for otherwise resolving it.¹²

Applicant is responsible, by court order, for providing medical insurance for his son and for paying one-half of any expenses not covered by insurance. Since approximately September 2015, he and his son have been covered through his wife's medical insurance. Applicant believes that his son's medical expenses comprise all of

⁸ Tr. at 63-64, and 113; AE N.

⁹ Tr. at 32-35, 39-40, 47-52, 52-57, 60, 77, and 94-96; AE A through G, I, and O. Applicant resolved each of the respective debts on the dates shown in parenthesis.

¹⁰ AE I, Tr. at 98. Because these debts were not alleged, I will consider them only for the purpose of evaluating mitigation and whole person.

¹¹ Tr. at 37-39.

¹² Tr. at 64-67.

the unresolved medical debt alleged in the SOR, which totals \$5,020 (SOR ¶¶ 1.d, 1.f, 1.g, 1.i, 1.n, 1.y, 1.z, 1.ee, and 1.ff).¹³ His son's mother does not always communicate with Applicant when these medical expenses are incurred, and he does not receive bills directly from the provider unless she provides them with his address. While he received the associated explanation of benefits forms from his insurance provider for these expenses, he did not recognize the actual notice that they afforded him of these expenses. Instead, he stated that he is not aware of these expenses until they appear on his credit report. Nevertheless, Applicant acknowledges that he is at least partially responsible for their repayment. He plans to take court action against his son's mother to compel her to communicate with him about his son's medical expenses and to contribute her share. At some point, Applicant plans to call each provider to set up payment arrangements to pay the unresolved medical debt.¹⁴

Applicant has not paid the balance of \$6,896 on a personal loan he obtained while in the military (SOR ¶ 1.b). At some point, he thought that he had discharge insurance, which would cover the balance. However, he acknowledges that he does not have such insurance and that he is responsible for the debt. He has not yet paid this debt because he chose to tackle smaller debts first.¹⁵

Applicant stated, without providing documentary proof, that 1) he paid the debts alleged in SOR ¶¶ 1.t and 1.w,¹⁶ 2) has been making payments to a collection company to resolve the debts alleged in SOR ¶¶ 1.s, 1.v, 1.x, 1.z (one of the unresolved medical debts),¹⁷ and 3) his non-SOR VA debts were resolved with a garnishment of his 2016 federal tax refund.¹⁸ He also stated, without providing documentary proof, that he disputed the debt alleged in SOR ¶ 1.aa.¹⁹ As to the debts alleged in SOR ¶¶ 1.i, 1.m, 1.o, 1.y (one of the unresolved medical debts), and 1.bb through 1.dd, Applicant stated that he plans to pay them.²⁰

Although not alleged in the SOR, Applicant became delinquent with his child support payments during his period of underemployment while residing in state B. He accrued arrearages of approximately \$9,000 (which included unpaid child support and medical expenses) as of August 2014, which had been reduced to approximately

¹³ However, included among his post-hearing submissions was an animal-related emergency medical bill (SOR ¶ 1.y).

¹⁴ Tr. at 39-55.

¹⁵ Tr. at 35-37.

¹⁶ Tr. at 69-72.

¹⁷ Tr. at 67-69.

¹⁸ Tr. at 69-70, and 98-100.

¹⁹ Tr. at 72-74.

²⁰ Tr. at 57-63, 74-77; AE P.

\$1,000 as of March 2017. He is paying an extra amount in addition to his regularly monthly child support obligation to repay the arrearage. His income tax refunds were also applied to his arrearage balance.²¹

Applicant attributes most of his debt to his periods of underemployment and unemployment between May 2011 and February 2013. However, he acknowledges that some of his debt accrued while serving in the Air Force during a time when he was “young and dumb” and did not manage his finances responsibly.²² In 2010, he received an Article 15 for using his government-issued credit card to pay for personal expenses of approximately \$1,300, including utility and insurance bills and expenses for his son. Applicant stated that he paid attorney fees and other costs associated with legal actions related to his son in 2010 and at other times. He did not provide specific timeframes or costs, but recounted having paid approximately \$3,000 for his attorney and approximately \$500 to \$1,500 for costs related to travel and court filings.²³

Applicant received a loan of \$6,500 in February 2017 from his grandmother to assist him in repaying his delinquent debt. As of March 2017, approximately \$400 to \$500 remained.²⁴ He used funds from a 401k loan of approximately \$3,000 to pay the debt alleged in SOR ¶ 1.a, which he settled for approximately \$2,800.²⁵

Applicant has not received financial counseling.²⁶ Applicant’s monthly expenses are between \$4,800 to \$5,000, whereas he and his wife’s combined income totals approximately \$4,200 to \$4,800 per month.²⁷ They both work extra jobs to help keep their finances from going into the red. They were last in the red approximately one year to eighteen months ago.²⁸

During his August 2014 subject interview, Applicant promised to contact his creditors to resolve his delinquent debts. When asked at the hearing, he attributed his delay in reaching out to the creditors about his remaining debts to his “[self-]pride” in not wanting to borrow money, and “life happen[ing]” due to the number of individuals with whom he shares his home.²⁹

²¹ See also Tr. at 82-84, 86-87, and 100. Because this debt was not alleged, I will consider it only for the purpose of evaluating mitigation and whole person.

²² Tr. at 36, 84, and 93.

²³ Tr. at 93-94.

²⁴ Tr. at 36, 81-82.

²⁵ Tr. at 32-35.

²⁶ Tr. at 77.

²⁷ Tr. at 79-80; and 104.

²⁸ Tr. at 81-82.

²⁹ Tr. at 104.

Policies

"[N]o one has a 'right' to a security clearance."³⁰ 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."³¹ 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."³²

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."³³ 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.³⁴ "Substantial evidence" is "more than a scintilla but less than a preponderance."³⁵ The guidelines presume a nexus or

³⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³¹ *Egan* at 527.

³² EO 10865 § 2.

³³ EO 10865 § 7.

³⁴ See *Egan*, 484 U.S. at 531.

³⁵ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.³⁶ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.³⁷ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.³⁸

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."³⁹ "[S]ecurity clearance determinations should err, if they must, on the side of denials."⁴⁰

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

³⁶ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

³⁷ Directive ¶ E3.1.15.

³⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁴⁰ Egan, 484 U.S. at 531; See also AG ¶ 2(b).

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20(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) is not established. Applicant has numerous delinquent debts that remain unresolved.

AG ¶ 20(b) is not fully established. The underemployment that followed his voluntary relocation and the unemployment that followed his firing were not circumstances largely beyond his control. I do find that circumstances largely beyond his control contributed to the accumulation of his son's medical expenses (SOR ¶¶ 1.d, 1.f, 1.g, 1.i, 1.n, 1.y, 1.z, 1.ee, and 1.ff), the car loan debts resulting from his 2007 car accident (SOR ¶ 1.r) and 2010 broken transmission (SOR ¶ 1.c). Applicant has acted responsibly with respect to the medical expenses and accident-related car loan. However, I do not find that Applicant has acted responsibly with respect to the transmission-related car loan. Similarly, Applicant did not act responsibly in addressing the debts accumulated due to his underemployment or unemployment should either be deemed to be a circumstance beyond his control.

AG ¶ 20(c) and 20(d) are not established. Applicant has not received financial counseling. Because he did not provide corroborating documents, I cannot conclude that Applicant has paid the debts alleged in SOR ¶¶ 1.t and 1.w, that he has been making payments to resolve the debts alleged in SOR ¶¶ 1.s, 1.v, 1.x, 1.z, that his non-SOR VA debts have been resolved, or that he disputed the debt alleged in SOR ¶ 1.aa. Even if I were to so conclude, those actions would not suffice to mitigate the Guideline F concerns. Moreover, Applicant's plan to pay his remaining debts is not reasonable in light of the existing record. While I credit Applicant with resolving the debts alleged in

SOR ¶¶ 1.a., 1.e, 1.h, 1.j, 1.k, 1.p, 1.q, 1.u, and 1.gg and with his efforts to resolve other debts, I cannot conclude that his financial situation is under control at this time.

AG ¶ 20(e) is not established. Applicant did not articulate a reasonable basis to dispute the debt alleged in SOR ¶¶ 1.aa, nor did he provide any documentary proof to substantiate his dispute or any actions taken to resolve the issue.

Accordingly, I find in favor of Applicant as to SOR ¶¶ 1.a, 1.d through 1.h, 1.j through 1.l, 1.n, 1.p through 1.r, 1.u, 1.y, 1.z, and 1.ee through 1.gg. There remain 14 unresolved SOR debts (SOR ¶¶ 1.b, 1.c, 1.i, 1.m, 1.o, 1.s, 1.t, 1.v through 1.x, and 1.aa through 1.dd), totaling \$17,124. I have considered the progress that Applicant has made in tackling his delinquent debt and the fact that he is not required to be debt-free in order to qualify for a security clearance.⁴¹ However, Applicant's plan for repayment of his outstanding debts is not reasonable in light of the existing record. Moreover, his actions from August 2014 through present and the current state of his financial affairs do not sufficiently demonstrate that he is both willing and able to follow through with his plan. Therefore, I cannot find that Applicant has met his burden to overcome the Guideline F concerns at this time.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 AG ¶ 2(a). Applicant was candid and sincere at the hearing. 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 not mitigated the security concerns raised by his financial

⁴¹ ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that 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).

indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b – 1.c:	Against Applicant
Subparagraphs 1.d – 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j – 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p – 1.r:	For Applicant
Subparagraphs 1.s – 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v – 1.x:	Against Applicant
Subparagraphs 1.y – 1.z:	For Applicant
Subparagraphs 1.aa – 1.dd:	Against Applicant
Subparagraphs 1.ee – 1.gg:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge