DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 16-01238
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2017

Decision on Remand

FOREMAN, LeRoy F., 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 September 30, 2015. On June 20, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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.[1]

[1] Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on July 16, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 25, 2016. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on August 31, 2016, but did not respond. The case was assigned to me on June 1, 2017.

On July 14, 2017, I issued a decision denying Applicant's application to continue his security clearance. I found against him regarding two unsatisfied judgments for homeowners' association fees, alleged in SOR ¶¶ 1.a and 1.b. I also found against him regarding a delinquent medical debt alleged in SOR ¶ 1.c. I found in his favor on a credit-card debt on an account for which he was an authorized user, alleged in SOR ¶ 1.d. My findings regarding SOR ¶¶ 1.c and 1.d are not affected by the remand.

In Applicant's answer to SOR ¶¶ 1.a and 1.b, he stated that he had a payment agreement for the two judgments, and that the agreement was attached to his answer. I pointed out in my decision that no agreement was attached. Department Counsel pointed out the absence of documentation in the FORM, but Applicant did not respond to the FORM, and did not avail himself of that opportunity to submit the missing documentation.

Applicant appealed my adverse decision, and he attached copies of a payment agreement to his appeal brief, claiming that the agreement was attached to his answer to the SOR when he submitted it. The Appeal Board remanded the case and directed that I "reopen the record and collect from the parties and consider as appropriate the documents which Applicant claims to have submitted."

To implement the Appeal Board's decision, I issued an order on October 2, 2017, directing Applicant to "send me a copy of the documents that he claims to have attached to his answer to the Statement of Reasons, along with any comments or argument he considers appropriate." The order gave him a deadline of October 18, 2017, for submitting the documents and gave Department Counsel 15 days after receipt of the documents to submit comments or argument regarding the documents. The order is attached to the record as Hearing Exhibit (HX) I.

On October 3, 2017, Applicant submitted a packet of documents, including an unsigned copy of a payment agreement with the homeowners' association dated January 12, 2015. Department Counsel did not object to his submission and did not submit any argument concerning it. The payment agreement is admitted as Applicant's Exhibit (AX) A. The documents accompanying AX A are attached to the record as HX II. Department Counsel's response to Applicant's submission is attached as HX III. Based on AX A, I have made additional findings of fact and reconsidered the applicability of the mitigating condition in AG ¶ 20(d) ("the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts").

Findings of Fact

When Applicant submitted his SCA in September 2015, he disclosed a delinquent debt for about $6,000 for homeowners' association dues. He stated that the issue arose in January 2009, and that he was resolving the debt through a payment plan providing for payments of $150 per month, plus the regular monthly dues payment of $68. (Item 5 at 29.) His credit report from October 2015 reflected a judgment filed against him in July 2012 for $4,883 and a second judgment filed against him in June 2014 for $2,770. (Item 7 at 5.) During a personal subject interview (PSI) in January 2016, he told an investigator that he began falling behind on his homeowners' association dues in January 2009 because he had unexpected bills for his car and his wife was not working. He told the investigator he began making monthly $150 payments on the debt in February 2015, in addition to the monthly dues payment of $68.

When Applicant responded to the SOR, his responses to SOR ¶¶ 1.a and 1.b were handwritten on a copy of the SOR, and he wrote, "See payment plan attached (I admit)." No payment plan was attached. In response to my order implementing the remand, Applicant submitted AX A and stated that it is the document that he submitted with his answer to the SOR.

AX A is a letter dated January 12, 2015, from the law firm representing the homeowners' association. The letter recites that the board of directors of the association had reviewed Applicant's "fee waiver payment plan request" submitted on December 12, 2014, and had denied it. However, the board of directors offered to waive late fees and interest in the amount of $1,723 and accept a payment plan providing for monthly payments of at least $150, in addition to the regular monthly assessments. The letter informed Applicant that the balance on his account, as of the date of the letter, was $8,985.24. The proposed payment plan included a payment schedule providing for $150 payments beginning on February 1, 2015, and ending with a payment of $135.24 on January 1, 2020. The proposed payment plan provided that a default on the regular monthly assessment or the installment plan will result in resumption of the collection action without further notice. The plan required Applicant to complete a financial questionnaire. The offer of a payment plan is signed by the attorney for the homeowners' association, but the copy submitted by Applicant does not bear his signature or his spouse's signifying acceptance of the offer. The packet of documents submitted by Applicant did not include a copy of the financial questionnaire or any documentary evidence of payments under the plan.

Analysis

Based on Applicant's representations, I have concluded that AX A probably was attached to his answer to the SOR. Based on Department Counsel's comments about the lack of documentation, I have concluded that AX A probably was not attached to Applicant's answer when Department Counsel reviewed the file.

I adhere to my analysis of the disqualifying conditions and mitigating conditions in my original decision, except for the analysis of AG ¶ 20(d), which is modified in light of the additional evidence in the record. In his SCA and the PSI, Applicant claimed that his inability to pay monthly dues began around January 2009, due to unexpected car expenses. The balance due as of January 2015, as recited in AX A, is the equivalent of at least eight years of nonpayment. While unexpected car expenses may have justified a few months of nonpayment, Applicant has offered no plausible and credible explanation for continued nonpayment. He has not established a good-faith effort to resolve the debt. He did not request a waiver of the delinquent dues until December 2014, six months after the second judgment was entered against him and more than two years after the first judgment was entered against him.

For the purposes of this decision on remand, I have assumed that Applicant signed the offer of a payment agreement and that the copy submitted as AX A is his unsigned file copy of the original. However, he has submitted no evidence of any payments under the agreement. He has been repeatedly reminded of the need for documentary evidence. While Applicant receives some credit for initiating an effort to resolve the debts, his failure to submit documentation of any payments, in spite of repeated reminders of the need for documentary evidence, precludes a finding that he is "adhering to a good-faith effort" to resolve the debts alleged in SOR ¶¶ 1.a and 1.b. It is reasonable for an administrative judge to expect an applicant to present documentary evidence showing resolution of specific debts. *See* ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). "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." ISCR Case No. 09-01652 at 3 (App. Bd. Aug 8, 2011), *citing Dorfmont v. Brown,* 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991).

Findings and Conclusion

I adhere to my previous findings against Applicant regarding the allegations in SOR ¶¶ 1.a, 1.b, and 1.c, and I adhere to my previous finding for him regarding the allegation in SOR ¶ 1.d. I adhere to my conclusion that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information, I adhere to my previous decision to deny his application for a security clearance.

LeRoy F. Foreman
Administrative Judge