



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-01937
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

10/19/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes three collection debts that totaled \$45,343 as of February 2016. Some difficult financial circumstances outside of his control compromised his finances, and he is making timely payments on his open accounts, including his mortgage. However, more progress is needed toward addressing his collection debts. Clearance is denied.

Statement of the Case

On October 10, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On November 8, 2016, Applicant answered the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On December 13, 2016, the Government submitted a File of Relevant Material (FORM), consisting of five exhibits (Items 1-5). DOHA forwarded a copy of the FORM to Applicant on December 15, 2016, and instructed him to respond within 30 days of receipt. Applicant received the FORM on January 23, 2017, and he responded on February 17, 2017. On February 22, 2017, the Government indicated that it had no objection to Applicant's response. On October 1, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant. On receipt of the case for review, I marked and admitted Applicant's response to the FORM as an Applicant exhibit (AE A).

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Evidentiary Ruling

Department Counsel submitted as Item 3 a summary of an unsworn enhanced subject interview of Applicant conducted on March 29, 2016. This document was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summary did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 15-01807 decided on April 19, 2017, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview in the absence of any objection to it or any indication that it contained inaccurate information. The applicant in that case had objected on appeal to the accuracy of some of the information in a FORM, but had not objected to the interview summary or indicated that it was inaccurate in any aspects when she responded to the FORM.

Like the applicant in ISCR Case No. 15-01807, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) (Item 3) is being provided to the

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. He was advised that if he did not respond, the interview summary may be considered as evidence in his case. Applicant did not state any concerns or objections to the information in the PSI when he responded to the FORM. I cannot presume without any evidence that Applicant failed to understand his due process rights or obligations under the Directive or that he did not want the summary of his interview considered in his case. Accordingly, I accepted Item 3 in the record, subject to issues of relevance and materiality in light of the entire record, including Applicant's admissions to the allegations.

Findings of Fact

As of October 10, 2016, Applicant owed three credit-card collection debts of \$19,475 (SOR ¶ 1.a), \$13,574 (SOR ¶ 1.b), and \$12,294 (SOR ¶ 1.c). When he answered the SOR, Applicant admitted the debts, which he attributed to overextending himself while maintaining two households during a marital separation and focusing on his medical bills while being treated for a serious illness. He expressed an intention to repay the debts in full as soon as he is able.

Applicant's admissions to the debts are incorporated as findings of fact. After considering the FORM, which includes Applicant's Answer to the SOR as Item 1, I make the additional findings of fact.

Applicant is a 59-year-old base manager, who has been employed by a defense contractor since February 1989. He earned his master's degree from an online university in

January 2008. Applicant served honorably on active duty in the United States military from October 1976 to October 1980. (Items 2-3.)

Applicant was twice married and divorced before he and his current spouse wed in June 1988. In September 2000, he and his spouse purchased their residence. They obtained a mortgage loan of \$164,517, to be repaid at \$1,016 per month for 30 years. They refinanced their home loan in June 2006 with a \$235,000 loan with repayments at \$1,264 per month. (Item 4.)

Applicant and his spouse separated in February 2010, and he moved out of the marital residence. Over the next three years, he incurred rent and other personal expenses for himself while apparently continuing to help his spouse financially. He used the credit-card accounts alleged in the SOR to purchase gasoline and household items. He also used the credit card in SOR ¶ 1.a to support his spouse and for food. (Items 2-3.)

Applicant's spouse remained in the marital home and paid the mortgage. In September 2011, Applicant and his spouse refinanced, obtaining their present mortgage loan of \$239,050 with repayment at \$1,247 monthly. (Items 3-4.)

In approximately March 2012, Applicant was diagnosed with a serious illness. Applicant indicates that he incurred medical bills in excess of \$30,000 (Items 1, 3), although he provided no documentation of any medical expenses. In October 2013, a credit-card account (SOR ¶ 1.b) was charged off for \$14,574. In January 2014, Applicant and his spouse reconciled, and he moved back into the marital home. He made no payments on another credit card (SOR ¶ 1.a) after January 2014. In October 2014, the account was charged off for \$13,054. He stopped paying on another credit card (SOR ¶ 1.c) in March 2014 with a \$12,294 balance. (Items 4, 5.)

On December 30, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to the financial record inquiries concerning delinquency involving routine accounts, Applicant indicated that he owed three past-due debts for \$12,000 (SOR 1.c), \$10,000 (SOR ¶ 1.b), and \$15,000 in collections (SOR ¶ 1.a). He gave his marital separation, illness, and medical expenses as the reasons for the delinquencies and indicated that he was paying what he could when he could. In response to any foreign travel in the last seven years, Applicant reported that he traveled to Italy for over two weeks and to Spain for less than one week between July 2015 and August 2015. (Item 2.)

On March 29, 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About his previously disclosed credit-card delinquencies, Applicant explained that he made timely payments on all his debts until late 2012 when his income was no longer sufficient to continue to pay above the monthly minimum payments. He indicated that he was presently making monthly payments in amounts under the monthly minimum because he could not afford more. His creditors would not agree to settle with him or arrange repayment plans when he contacted them in 2013. However, the creditor identified in SOR ¶ 1.a had contacted him in March 2016

about a settlement. He expressed an intention to fully settle the debt in April 2016 and to contact his other creditors and propose settlements by the end of 2016. Applicant had not sought credit counseling. He described his financial status as stable. When asked about his trip to Europe in July 2015, Applicant indicated that he and his spouse went to Italy for sightseeing for nine days and then took an 11-day cruise. (Item 3.) There is no information in the file about the cost of that vacation.

A check of Applicant's credit on February 23, 2016, revealed that he owed delinquent balances of \$19,475 (SOR ¶ 1.a), \$13,574 (SOR ¶ 1.b), and \$12,294 (SOR ¶ 1.c), but also that there had been activity on the accounts in January 2016. He was making timely payments on his mortgage (balance \$221,720) and on \$37,513 in credit card balances on 12 open credit card accounts in his name only. Two of the 12 credit-card accounts were opened in March 2015 and August 2015. The accounts had respective balances of \$2,003 and \$1,492 as of February 2016. (Item 4.)

A check of Applicant's credit on December 7, 2016, showed no new delinquencies. Applicant owed \$13,324 on the credit-card debt in SOR ¶ 2.b, which had been charged off for \$14,574, and \$12,044 on the credit-card debt in SOR ¶ 2.c, which had been charged off for \$13,054. A payment had been made on both accounts in October 2016. The credit card delinquency in SOR ¶ 1.a was not on his credit report. (Item 5.)

In response to the SOR, which alleges financial considerations security concerns raised by the three delinquent credit-card accounts, Applicant explained on November 8, 2016, that he became overextended during his marital separation and that in March 2012, he was diagnosed with cancer and had to undergo two surgeries, 80 radiation treatments, and nine weeks of chemotherapy. He made a conscious decision at that time to concentrate on his medical bills. He explained that the delinquencies were not indicative of his overall credit in that no other accounts became delinquent. He was making small payments toward his past-due accounts when he could afford it. (Item 1.)

Concerning the three delinquent accounts, Applicant stated on February 17, 2017, "I continue to pay on all three accounts and I hope to have a workable payment solution to get these debts settled soon." He expressed regret for the manner in which he handled his finances while supporting two households and paying medical debts. Citing his 33 years of total service in the military and as a government contractor, he denied that his debts had affected his ability to perform his duties responsibly and professionally. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 to obtain a favorable security decision.

A person who seeks access to classified 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 classified information. 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. Section 7 of EO 10865 provides that 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 concerns about financial considerations are set forth 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. 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.

The Government met its burden of establishing a *prima facie* case for disqualification. As of February 2016, Applicant owed approximately \$45,343 in credit-card collection debt. Disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the security concerns raised by his delinquent debts. Under the AG effective for any adjudication on or after June 8, 2017, a record of undisputed consumer delinquency may be mitigated under one or more of the following conditions under ¶ 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;

(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 person has received or is receiving 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 initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Mitigating condition AG ¶ 20(a) cannot reasonably apply in light of the ongoing delinquency on the three accounts in the SOR. His financial problems were largely caused by his cancer diagnosis and subsequent medical treatment and his marital separation, but it is difficult to conclude that they are unlikely to recur without knowing his medical prognosis or the state of his marital union. However, both his medical illness and his marital separation are circumstances that implicate AG ¶ 20(b). His account in SOR ¶ 1.b was closed in October 2013 and charged off for \$14,574 when he was separated and had unforeseen medical costs. Applicant provided no detail about the extra expenses incurred to sustain his own household for three years, but he estimated that he incurred more than \$30,000 in out-of-pocket medical expenses for his cancer treatment between August 2012 and February 2014. Applicant would have a stronger case for mitigation under AG ¶ 20(b) had he presented documentation showing payment of significant medical expenses. At the same time, he was forthright about his financial delinquencies on his SF 86, which he

attributed to his separation, cancer diagnosis, and medical expenses. His disclosure of his financial issues reflects trustworthiness.

Under AG ¶ 20(b), an individual is required to act responsibly once the crisis that led to the financial difficulties has passed. Applicant reconciled with his spouse in January 2014. He informed an OPM investigator that he incurred his extensive out-of-pocket medical expenses between August 2012 and February 2014. Available credit information shows that he did not become delinquent on the accounts in SOR ¶¶ 1.a and 1.c before February 2014. Both accounts were charged off in October 2014. He no longer had the expenses of a separate residence, and he presented no evidence of medical bills at that time that could explain his failure to make his payments on those credit cards. Depending on the interest rate on the outstanding balances, Applicant could have had a high monthly minimum payment on those accounts that he could not sustain, given the number of his open credit-card accounts. His February 2016 credit report shows that he had 14 additional credit cards acquired before 2014. His extensive reliance on consumer credit cannot be ruled out as a significant contributor to his SOR debts. Applicant indicated, with no evidence to the contrary, that when he began struggling to keep up with his payments on the accounts in the SOR, he contacted his creditors, who refused to consider settlements at that time. His effort in that regard was responsible, but the evidence also shows that he and his spouse took a three-week vacation in Europe in the summer of 2015. Whatever they paid for that trip, it is difficult to justify when he owed charged-off or collection balances exceeding \$40,000.

AG ¶ 20(d) has some applicability in that Applicant has made some small payments on the accounts. He indicated during his March 2016 subject interview that he had been paying on the three delinquent accounts every month, albeit less than the monthly minimum. His credit reports tend to substantiate some payments. The credit card account in SOR ¶ 1.c was charged off for \$13,054. As of February 2016, the balance was \$12,294. As of early December 2016, his balance was \$12,044. Similarly, with respect to the credit card account in SOR ¶ 1.b, which was charged off for \$14,574, he owed \$13,574 as of February 2016 and \$13,324 as of November 2016. It may reasonably be inferred that, by December 2016, Applicant has paid at least \$1,010 (SOR ¶ 1.c) and \$1,250 (SOR ¶ 1.b) toward those charged-off accounts. The credit card debt in SOR ¶ 1.a was no longer on his credit record as of December 2016, so it unclear if Applicant has made any recent payments on that account. Information from January 2016 shows that the account was \$7,613 past due on a balance of \$19,475. The reported high balance on the account was \$20,225, so he could have paid \$750 if not more toward that debt. Applicant's efforts to make some payments toward these collection balances weigh in his favor.

Nonetheless, these small payments over the past few years are not enough to conclude that there are clear indications that the problem is being resolved. Applicant has had no financial counseling. He opened two new credit-card accounts in 2015 on which he incurred respective balances of \$2,003 and \$1,492 by February 2016. His continued reliance on consumer credit when he owed more than \$40,000 in collection debt and already had several open credit card accounts on which he owed approximately \$34,000 as of February 2016 raises concerns about his financial mismanagement that are not

mitigated by circumstances outside of his control. AG ¶ 20(c) is not established by the evidence in the record.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).² The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In evaluating Guideline F cases under the whole-person concept, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant apparently had a settlement offer from the creditor owed the debt in SOR ¶ 1.a as of March 2016. He told the OPM investigator that he would attempt to settle the debt and pay it in April 2016 and that he would contact his other creditors by the end of 2016 about possibly settling those debts. Applicant had settled none of the debts by February 17, 2017, when he stated, "I continue to pay on all three accounts and I hope to have a workable payment solution to get these debts settled soon." He provided no documentation showing ongoing payments and so it cannot be determined whether he has made enough progress to conclude that his debts are likely to be resolved in the near future.

² The factors under AG ¶ 2(d) are as follows:

(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.

Applicant's many years of service, primarily as a civilian contractor on behalf of the military, weighs in his favor. However, the Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). In choosing a decision on the written record, it was incumbent on Applicant to present the income and expense information to explain his delinquencies, but also to reflect his financial stability. His evidence falls short of meeting his burden of overcoming the financial considerations security concerns. Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

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, Financial Considerations:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge