



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



In the matter of:

)
)
)
)
)

ISCR Case No. 17-00083

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

01/12/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's record of delinquency includes two defaulted mortgage loans and a credit-card judgment for \$11,060. The mortgage debts have been cancelled, and he has made payments since January 2013 toward the judgment. No progress has been made toward resolving \$53,184 in student loan debt that he co-signed for an ex-girlfriend. As of August 2017, she was attempting to have Applicant removed as a co-signer on her loan. His financial situation has stabilized, but some concerns persist about his financial judgment. Clearance is denied.

Statement of the Case

On March 13, 2017, 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 his access to classified information. 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 April 1, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 1, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I scheduled a hearing for August 1, 2017.

While this case was pending a hearing, 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, 2017.¹ Applicant was informed with the Notice of Hearing that the new AG would be considered in his case.

I convened the hearing as scheduled. Three Government exhibits (GEs 1, 3-4) and three Applicant exhibits (AEs A-C) were admitted into evidence without objection. A report of subject interview, which was offered as GE 2, was excluded under ¶ E3.1.20 of the Directive. Applicant testified, as reflected in a transcript (Tr.) received on August 8, 2017.

I held the record open for three weeks after the hearing for Applicant to submit additional documentation. On August 18, 2017, Applicant submitted 11 additional exhibits, which were entered into the record as AEs D-N without objection. On August 25, 2017, The Government indicated that it did not object to the admission of AEs D-N. I accepted the exhibits in evidence and closed the record on that date.

Findings of Fact

The SOR alleges under Guideline F that, as of March 13, 2017, Applicant had a mortgage account foreclosed in approximately 2015 (SOR ¶ 1.a) and that he was indebted for \$42,855 on a charged-off loan (SOR ¶ 1.b), for \$11,060 on an account in collection (SOR ¶ 1.c), and for \$35,184 on a student loan in collection (SOR ¶ 1.d). Applicant admitted the debts but explained that the mortgage loan foreclosure was reconciled by tax year 2016; that the mortgage debt in SOR ¶ 1.b was cancelled in 2015; that he has made weekly payments to reduce the debt in SOR ¶ 1.c to \$2,824; and that he had co-signed for the student loan in SOR ¶ 1.d for a then cohabitant girlfriend with whom he was no longer involved. He indicated that he had no success in having his name released from the defaulted student loan. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 49-year-old technical writer, who has worked for his defense contractor employer since April 2009. Applicant retired from active duty military service in

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

April 2009 after 21.5 years of honorable service. He was married to his first wife from February 1992 to May 2002 and has two grown children from that marriage. Applicant married his second wife in December 2009. They separated four years later. Applicant was granted his first DOD secret security clearance in 1987. His secret clearance was renewed most recently in September 2010. (GE 1.)

In May 2004, Applicant bought a home with a primary mortgage of \$107,920. In December 2004, he obtained a second mortgage for \$72,000. Through loan refinancing or transfers, he owed \$181,600 (SOR ¶ 1.a) and \$45,400 (SOR ¶ 1.b) on the loans as of July 2006. (GE 3; Tr. 28.)

In February 2007, Applicant co-signed a student loan for \$24,660 for his then cohabitant girlfriend. Their relationship ended before Applicant married his second wife. Unbeknownst to Applicant at the time, his ex-girlfriend defaulted on the student loan after she lost her job. The loan was placed for collection (SOR ¶ 1.d) for \$35,184 in March 2012. (GE 3.)

In February 2012, Applicant had a credit card charged off and placed for collection for \$9,234 (SOR ¶ 1.c) after a last payment in May 2011. Applicant explained about the credit card debt that he relied on credit more than he should have, and “the credit card slipped.” (Tr. 25, 35.) A default judgment was entered against him for \$11,060 in 2012. (Tr. 51-52.) Payment records show that Applicant began repaying the debt in January 2013. Required to pay at least \$40 a week initially, he made five payments of \$150 in an effort to reduce the balance, but he could not afford to maintain those payments. He continued to make weekly payments, however, and by mid-March 2017, he had paid \$10,719 to reduce the balance to \$2,824. By his hearing in August 2017, he had paid another \$1,205 toward the debt. At his current payment rate of \$65 weekly, he expects that the debt will be fully satisfied in January 2018. (AE C; Tr. 25-26.)

Applicant’s second mortgage was charged off for \$42,855 in approximately June 2012. (GE 3.) It is unclear why he stopped paying on the second mortgage, although Applicant testified that he spent \$10,000 to \$12,000 annually from 2011 to 2015 for his daughter’s college. (Tr. 47-48.)

Applicant’s second wife abandoned their marriage in late November 2013. Applicant made no payments on his primary mortgage after December 2013 because he could not afford the payments on his income alone.² (GEs 1, 3-4; Tr. 28-29.) Applicant tried a loan modification and also a short sale of his home without success. He listed the house at \$129,000 initially and lowered the price every month or so, but had not sold the house before his loan was foreclosed in November 2015. (Tr. 29, 45-47.) Applicant lived in the home without paying the mortgage from January 2014 until November 2015. Income that should have gone to his mortgage payments went initially into his savings and then, at the

² Applicant’s March 2015 credit report indicates that his primary mortgage was to be repaid at \$1,507 per month for 30 years while his second mortgage was to be repaid at \$377 per month for 15 years. (GE 3.) Applicant testified that his mortgage payments had been approximately \$2,100 per month when he stopped his payments. (Tr. 45.)

advice of his lawyer, into the house listed for a short sale. Applicant spent about \$15,000 in the unsuccessful effort to sell his house before his primary loan was foreclosed in November 2015. (Tr. 45-46.) Some of the funds also went to pay an attorney following his arrest for drunk driving in September 2014. (GE 1; Tr. 45.)

Applicant completed and certified to the accuracy of a Questionnaire for Security Positions (SF 86) on February 16, 2015. He disclosed the financial judgment for his credit card delinquency (SOR ¶ 1.c) and the deficiency on his primary mortgage, which he was trying to resolve in a short sale. (GE 1.) As of January 2015, Applicant's primary mortgage was \$23,632 past due with a \$177,250 balance. (GE 3.)

In March 2015, the creditor holding his defaulted second mortgage (SOR ¶ 1.b) cancelled his debt for \$43,056. (AE B.) On his federal income tax return for tax year 2015, Applicant reported that his home sold for \$43,059 and that he made capital gains of \$4,056 on the sale. He owed federal income taxes of \$1,824 on adjusted gross income of \$94,722. He earned wages of \$66,709, and his pension income was \$21,886. (AE E.) He withdrew \$2,800 to \$3,000 from his 401(k) to pay his federal and state income taxes. (Tr. 32.)

In May 2016, Applicant's primary mortgage debt was cancelled for \$177,250. (AE A.) Applicant applied the discharged debt as a reduction of a tax attribute on his principal residence when he completed his income tax return for tax year 2016. He took a withdrawal from his 401(k) to pay his federal income tax debt of \$1,263 on adjusted gross income of \$92,784. He earned wages of \$68,022 and had pension income of \$21,891. (AE F.)

A judgment was entered against Applicant's ex-girlfriend for the student loan co-signed by Applicant. In July 2017, the judgment creditor sought a review of her financial ability to repay the judgment. As of August 2017, Applicant's ex-girlfriend was working with her attorney to have Applicant removed as co-signer for the defaulted loan. (AE N; Tr. 38.) Applicant has not been pursued for the debt by the creditor. (Tr. 27.) He understands that he incurred legal liability for repayment as a co-signer. (Tr. 38.) If Applicant is not released from the loan, he plans to attempt to reach a settlement and establish a repayment plan. (AE D.)

Applicant's daughter earned her college degree in 2015. In addition to paying \$40,000 to \$50,000 for her education. Applicant paid \$10,000 to \$12,000 for his son's first year in college from fall 2015 to spring 2016. Applicant's ex-wife has not asked him to contribute to their son's educational costs since then because their son attends college part time. (Tr. 42, 48-49.)

In February 2016, Applicant opened a credit card account with a \$9,000 credit limit. As of November 2016, the account was rated as current with a \$7,063 balance. (GE 4.) Applicant attested to having an account balance of \$5,000 as of August 2017. Applicant has no other open credit card accounts. (Tr. 42.)

Applicant's take-home pay is approximately \$800 per week. (Tr. 40.) His military retirement pay after taxes is \$1,300 monthly plus \$133 in military disability. (Tr. 43, 50.) His

monthly expenses include rent at \$950, utilities at \$200, a truck loan at \$397, Internet at \$79, cell phone at \$100, and \$260 for the credit-card judgment. (GE 4; Tr. 40-41.) His credit report shows that he has a monthly minimum payment of \$114 on his credit card. Applicant has roughly \$60,000 in his retirement account at work. (Tr. 50.) As of August 2017, Applicant had \$2,000 in savings and \$2,000 in checking account deposits. (Tr. 43.)

Character References

The manager of Applicant's department attests to Applicant's work being of the highest quality. Applicant is conscientious, efficient, and timely in fulfilling his assignments, and punctual in his attendance. (AE G.) Applicant's current supervisor indicates that Applicant can be counted on for his reliability and dedication. He describes Applicant as his "go-to-individual for a wide range of issues." Because of his experience, Applicant has been selected to mentor new employees. (AE H.) Applicant also presented references from three co-workers who have worked alongside Applicant since he joined their department in the spring of 2012. They have no doubts or concerns about Applicant's integrity, behavior, or loyalty. Their employer trusted Applicant by making him the classified material custodian for their group from 2014 until 2016, when their department moved into a closed area eliminating the need for that position. Applicant has demonstrated that he is capable of handling any situation professionally. (AEs I-K.)

Applicant has been a member of a volunteer fire department since 2004. The chief of the fire company has "had the privilege" of working with Applicant in emergency situations and at community events since then. He attests to Applicant being well respected in the city and surrounding communities. (AE L.)

A friend of Applicant's for the past seven years met Applicant as a member of a running endurance relay team. Applicant has captained several teams and displayed his commitment to their events. This friend has come to know Applicant as trustworthy and as someone "always willing to put the needs of others before himself." (AE M.)

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 articulated 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.

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. Applicant defaulted on his second mortgage in 2012 (SOR ¶ 1.b) and on his primary mortgage in 2013 (SOR ¶ 1.a). He stopped paying on a credit card in May 2011 (SOR ¶ 1.c). Additionally, Applicant’s ex-

girlfriend defaulted in 2010 on a student loan that Applicant co-signed in 2007 (SOR ¶ 1.d). Applicant was unaware of her default because they had separated before he remarried in December 2009, but he remains legally liable for repayment unless his ex-girlfriend is successful in having him removed from her loan. Two disqualifying conditions under AG ¶ 19 apply in this case: AG ¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant has the burden of mitigating the security concerns raised by the delinquent debts. The following conditions under AG ¶ 20 may apply:

(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;

(d) the individual 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.

Available credit information substantiates the debts, which were too recent to trigger AG ¶ 20(a) in mitigation. AG ¶ 20(b) has partial applicability in that his second wife’s abandonment of their marriage in late November 2013 was an unforeseen circumstance that left him unable to make his monthly payment on his primary mortgage. AG ¶ 20(b) could apply to the student loan in that Applicant had received no correspondence about that loan and had no knowledge that his ex-girlfriend had defaulted on her payments. However, the evidence does not establish that Applicant’s marital separation caused his default of his second mortgage or credit card, which predated the breakup of his marriage. College expenses for his daughter totaling \$10,000 to \$12,000 annually from 2011 to 2015 were reasonable and likely caused some financial strain. Yet it is unclear why he stopped paying on his credit card in 2011 and on his second mortgage in 2012, when he was married to his second wife. There is no evidence that his second wife was unemployed or working but not contributing to the household income at that time.

The evidence of good-faith effort to resolve debts under AG ¶ 20(d) is limited to his attempt at a short sale of his home to avert foreclosure of his primary mortgage, although with regard to the short sale, Applicant did not provide any documentation that would allow me to find that he did all that he could under the circumstances to address the defaulted loan. AG ¶ 20(d) does not mitigate the foreclosure of his primary mortgage or the charge off of his second mortgage. Applicant's weekly payments since January 2013 to resolve the credit card delinquency were in response to a default judgment and do not qualify as a good-faith effort under AG ¶ 20(d). After learning that his ex-girlfriend had defaulted on her student loan, Applicant verified the default with his ex-girlfriend, but it is not enough to qualify for mitigation under AG ¶ 20(d).

Applicant has a partial case for mitigation under AG ¶ 20(c) in that there are clear indications that his credit-card judgment is being resolved. He had yet to fully satisfy the judgment as of August 2017 because of interest assessed, but he had paid more than \$11,000 toward the debt. The legal cancellation of his liability for the mortgage debts does not carry the same weight in mitigation had he made some payments, but the cancellation of his indebtedness removes those debts as a potential source of financial pressure.

Recent court documents reference a judgment (no amount shown) for the student loan that was entered against Applicant's ex-girlfriend only, which tends to substantiate Applicant's assertion that he has not been pursued for the debt. Applicant's ex-girlfriend attested in August 2017 that she was working through her attorney to have Applicant removed as co-signer, but there is no evidence that this has occurred. As of September 2017, Applicant was still legally liable for repayment of his ex-girlfriend's student loan debt, which had a reported balance in collection of \$35,184 as of May 2012.

Additionally, AG ¶ 20(e) is not satisfied without some documentation to prove that he has no legal liability on the account. Applicant indicated that if he is not released from the debt, he will attempt to settle the student loan and make repayment arrangements. A promise to pay a delinquent debt in the future, no matter how sincerely made, is not a substitute for having paid the debt. See e.g., ISCR Case No. 14-04565 (App. Bd. Sep. 18, 2015).

Appeal Board precedent requires that "a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." 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, 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. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant is not required to pay off all of his SOR debts if he is handling his finances in a manner that shows sound judgment.

Despite annual wage and pension income exceeding \$88,000 in both 2015 and 2016, Applicant had to withdraw funds from his 401(k) to pay income tax liabilities that did not exceed \$3,000. He had college expenses for his two children and attorney fees (including for a DUI) in 2015, but he was also staying in his home without paying his mortgages. He paid \$10,000 to \$12,000 for his son's college in the spring semester of 2016, but he has not had to pay any college costs since then. Applicant's income would appear to be more than sufficient for his present expenses. He has no record of late payments on his car loan or on the credit card obtained in February 2016. Yet, his record of delinquency is relatively recent evidence of poor financial judgment.

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).³ 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.

Applicant has demonstrated reliability and trustworthiness at work that weighs in his favor in the whole-person evaluation. Yet, cancellation of mortgage loan debt totaling approximately \$220,306 and credit card payments in response to a default judgment do not demonstrate the sound judgment and reliability that must be demanded of persons granted access to classified information. It is well settled that once a concern arises regarding an

³ 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 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). Even if he is relieved of any repayment liability for his ex-girlfriend's student loan, he has yet to show a sufficient track record of financially responsible behavior. For the reasons noted above, I conclude that it is not clearly consistent with the national interest to continue Applicant's security clearance eligibility 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge