



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 17-02045

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes \$14,822 on a car loan charged off in September 2011. He also has yet to resolve a \$1,720 judgment for defaulting on a lease for credit-card processing equipment in 2009. These debts are not recent, but he has made no effort to address them. Clearance is denied.

Statement of the Case

On June 28, 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 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 National Security Adjudicative Guidelines (AG) effective June 8, 2017, for all adjudications for national security eligibility or eligibility to hold a sensitive position.

On July 24, 2017, Applicant responded to 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 August 22, 2017, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1-6). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on August 30, 2017. He submitted a response on September 22, 2017. On September 26, 2017, Department Counsel indicated that the Government did not object to Applicant's FORM response. On January 18, 2018, 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 file, I admitted Applicant's response to the FORM as an Applicant exhibit (AE A).

Evidentiary Ruling

Department Counsel submitted as Item 6 a summary of a subject interview of Applicant conducted on February 6, 2017. The summary 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. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, 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 6) is being provided to the 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. Applicant is a college graduate, who can reasonably be held to have understood the footnote, and he did not object to the PSI or indicate that it contained inaccurate information. Accordingly, I accepted Item 6 in the record, subject to issues of relevance and materiality in light of the entire record.

Summary of SOR Allegations

The SOR alleges that, as of June 28, 2017, Applicant owed \$14,822 on a charged off automobile loan (SOR ¶ 1.a) and a \$1,720 judgment from 2016 (SOR ¶ 1.b). (Item 1.) When Applicant answered the SOR, he denied the allegations but cited mitigating conditions. He explained that even with his position being outsourced in June 2007 and his marital separation and divorce, he maintained his car loan payments until 2010. As for the judgment debt, Applicant indicated that he took possession of credit-card processing equipment in May 2008, and sold the business to its previous owner in March 2009. Lease payments continued through October 2009, well after the leased equipment had been returned to the lessee. (Item 2.)

Findings of Fact

After considering the FORM, which includes Applicant's response to the SOR as Item 2, and Applicant's rebuttal to the FORM (AE A), I make the following findings of fact.

Applicant is a 55-year-old college graduate, who has worked as a senior quality engineer with a defense contractor since July 2012. He has not held a DOD security clearance. He was married to his first wife from June 1981 to January 1993 and has two grown sons. Applicant was married to his second wife from June 1993 to April 2008. He has been in a cohabitant relationship since November 2010. (Item 3.)

Applicant held a full-time job as a machine designer, when, in April 2006, he and his second wife formed a limited liability company (LLC). Under the LLC, they operated an entertainment club as a sole proprietorship. (Items 3, 6.)

In January 2007, Applicant obtained a car loan for \$29,465 (SOR ¶ 1.a), to be repaid at \$483 per month. (Items 2, 4-5.) In June 2007, Applicant's full-time job of 12 years was outsourced to a foreign country. Applicant chose not to take a different position with the company at another location. He was self-employed in his entertainment business for

the next 3.5 years. (Item 3.) In May 2008, Applicant leased credit-card processing equipment for his business. Applicant personally guaranteed to make the lease payments of approximately \$70 a month for 48 months. (Item 2.) Due to increasing business expenses in relation to revenue, Applicant and by then his ex-wife relinquished any interest or ownership of personal property and real estate associated with the LLC to the “seller” with whom they had purchase contracts. The seller agreed to cancel the purchase contracts and deed of trust; “resume 100% membership” in the LLC; assume up to \$10,000 in preexisting credit card debt of the LLC; pay some taxes; and pay no more than \$500 due to a wholesaler. Applicant and his ex-wife warranted that there were no debts exceeding those specified, and they agreed to fund any additional or unspecified costs on demand from the seller. Applicant remained on staff as manager until the business was sold.¹ (Item 2.) Applicant presented no information about his income when he worked as a machine designer, when he was self-employed, or when he worked as a manager at the entertainment venue.

Applicant asserts that when he relinquished his interest in the LLC, the owner accepted the debt for the leased credit-card processing equipment; that the equipment was returned to the lessor because it was no longer in use after March 2009; and that lease payments nonetheless continued until October 2009 after the equipment had been returned. (Item 2.) In its complaint for a judgment against Applicant for the unpaid balance of the lease, the lessor corroborated that the LLC made a last payment on October 19, 2009, for a total paid under the lease of \$1,639. In October 2010, the lessor charged off the account for \$2,109. (Item 5.) In April 2016, a \$1,720 judgment was awarded against Applicant on the defaulted lease (SOR ¶ 1.b). (Item 4.)

In 2010 or early 2011, Applicant abandoned the vehicle that he financed in 2007 because it had mechanical problems. He stopped paying on the loan, and in September 2011, his account was charged off for \$17,036 (SOR ¶ 1.b). (Items 4-6.)

Applicant was unemployed from January 2011 until July 2012. He lived rent free with his parents from January 2011 to October 2011, when he moved in with his cohabitant. (Item 6.)

On December 17, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to inquiries concerning delinquency involving routine accounts, Applicant indicated that he had about \$50,000 in unrecalled credit card debt charged off because of his divorce and loss of his primary employment in 2007. He indicated that he paid primary balances and interest during the years 1990 to 2010. Concerning any non-criminal court actions in the last ten years, Applicant responded “No,” but added, “Letters received, unknown to me whether or not any actions were filed or finalized.” (Item 3.)

¹ Applicant indicated on his SF 86 and during his subject interview that he was self-employed until January 2011. He discrepantly indicated in response to the SOR that he remained manager through January 2010, when the owner closed the business and sold the real estate assets.

As of January 2016, Applicant had two outstanding delinquencies on his credit record: \$14,822 for the defaulted auto loan (SOR ¶ 1.a) and \$1,720 for the defaulted lease for the credit-card processing equipment (SOR ¶ 1.b). An automobile loan obtained in February 2008 for \$25,075 was charged off in October 2009 and reportedly had a zero balance. Applicant asserts that he co-signed on a car loan for his brother, while the credit bureaus are reporting the debt on Applicant's credit as an individual account. Applicant explained that his brother totaled the car in an accident. Insurance partially covered the loan balance, but both he and his brother refused to pay the \$5,000 remaining on the loan. In January 2011, Applicant surrendered another vehicle voluntarily because he could not afford to continue making the \$366 monthly payment. He owed \$9,314 on the car loan at the time, although the creditor had apparently accepted the vehicle in lieu of the debt. (Items 5-6.) Applicant was making timely payments of \$233 and \$611 per month respectively on automobile loans obtained jointly for \$13,814 in May 2014 and \$37,996 in September 2015. A long-held credit card was current with a \$9,282 balance. He had no other outstanding balances on his credit report. (Item 5.)

On February 6, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When reviewing the SF 86 financial record inquiries with the investigator, Applicant admitted that he should have responded affirmatively to whether he had possessions or property repossessed within the last seven years because he voluntarily surrendered a car in early 2011. He had not received any demand for payment of the balance on the loan. As for the defaulted car loan alleged in SOR ¶ 1.a, Applicant admitted that he abandoned the car in a field when he owed approximately \$15,000 on the loan and that he did not respond to demands for payment. He indicated that he had no intention to address the reported delinquency because the loan has been charged off. Applicant also denied any intention to make any additional payments toward the loan for the vehicle totaled by his brother. When asked whether he had any other accounts charged off or cancelled for failing to make payments on agreed-upon terms, Applicant indicated that he had returned the leased credit-card processing equipment in 2009 with approximately \$2,000 still due under the lease. To his knowledge, the account had been charged off, and he was unable to make any further payments. He did not intend to make any further payments on the account. Applicant was given an opportunity to provide documentation during and after the interview to corroborate his disagreement with the debts on his credit record. He explained that he had not maintained any records. When asked about any delinquent credit cards, Applicant responded that he did not know whether he had any accounts suspended, charged off, or cancelled for failing to pay as agreed in the last seven years. He had no explanation for why he listed \$50,000 in unsecured credit card debt on his SF 86. Applicant attributed his financial delinquencies to his divorce, business losses, unemployment, but also to impulsive spending. He asserted that he was presently living within his means. (Item 6.)

As of May 2017, Applicant's credit report showed no progress toward resolving the \$1,720 judgment or the \$14,822 balance on the car loan charged off for \$17,036.² He was

² The charged-off balance of \$17,036 may include interest charges. There is no evidence Applicant made any payments to reduce the balance from \$17,036 to \$14,822. The latter may well be what was owed on the loan when Applicant stopped paying.

making timely payments of \$611 monthly on the car loan obtained in September 2015 and had reduced its balance to \$27,329. In June 2016, he paid off the car loan obtained in May 2014. However, he was making payments of \$419 per month on a new car loan obtained in January 2017 for \$22,870. His one active credit card account was current with a balance of \$7,639. (Item 4.)

As of mid-September 2017, Applicant was contesting the nexus between financial delinquency and his ability, interest, and willingness to protect U.S. security interests. He cited a steady improvement in his credit score since 2011 as evidence to corroborate that his financial problems were due to the outsourcing of his position in 2007 rather than to financial overextension when he was employed (AE A), but he did not provide any evidence of his credit scores. Applicant also did not submit evidence of any attempts on his part to resolve the debts in the SOR.

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.

Applicant is not required to be debt free, but he is required to manage his finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F is broader than the possibility that an individual might knowingly compromise classified information in order to raise money to address debts. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information.

Guideline F security concerns are established by the defaulted car loan (SOR ¶ 1.a) with a \$14,822 balance and the outstanding judgment of \$1,720 from April 2016 for the leased credit-card processing equipment (SOR ¶ 1.b). Both debts are reported on his May 2017 credit report.³ Applicant acknowledged during his subject interview that he owed approximately \$15,000 on the car loan when he abandoned the vehicle. Concerning the defaulted lease for business equipment, even if Applicant or the new owner returned the credit-card processing equipment to the lessor, Applicant was contractually liable for the remainder of the lease payments. A court is not likely to have issued a judgment against him without evidence of his contractual liability. Disqualifying conditions 19(b),

³ The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See, e.g., ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015).

“unwillingness to satisfy debts regardless of the ability to do so,” and 19(c), “a history of not meeting financial obligations,” primarily apply. Applicant expressed during his OPM interview that he had no intention of making any further payments toward either debt because they had been charged off by the creditors. Concerning AG ¶ 19(a), “inability to satisfy debts,” the car loan in SOR ¶ 1.a was charged off in September 2011 when Applicant was unemployed, but he also told an OPM investigator that he stopped paying on the loan after he abandoned the car due to mechanical difficulties. It is unclear that he would have made payments on the car loan even if he had the income to do so.

Financial delinquencies are potentially mitigated under one or more of the following conditions under 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;

(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.

AG ¶ 20(a) is partially implicated in that the delinquencies were not incurred recently. Applicant’s failure to take any steps to repay the court judgment or address the significant car loan delinquency continue to cast doubts on his judgment and reliability, however. Concerning AG ¶ 20(b), it was not shown that the outsourcing of his position in June 2007 or his divorce, which was final in April 2008, caused the financial issues. Applicant continued to make his car payments until 2010 or early 2011 when he abandoned the vehicle. Applicant told the OPM investigator in February 2017 that he was unable to make any payments on the defaulted lease for the credit-card processing equipment because it had been charged off. A judgment had been awarded the lessor for \$1,720 in April 2016. There is no indication that the investigator was aware of the judgment when he interviewed Applicant. It is unclear Applicant knew about the judgment. He did not

mention the judgment during his OPM interview, although he had disclosed on his SF 86 that he had received some letters about civil court action. Applicant was placed on notice of the judgment when he received the SOR, and with his July 2017 response, he presented the first page of the civil complaint filed against him for defaulting on the lease for the equipment for his business. Applicant asserts that contractual liability for the debt was assumed by the person to whom he turned over all interest in the LLC in March 2009. The “Waiver of Contractual Rights” relied on by Applicant indicates that the previous owner (referred to as “seller”) agreed to “Assume up to \$10,000 pre-existing credit card debt of the LLC.” However, the lease Applicant signed in May 2008 personally guaranteeing the lease payments is not a credit card debt. It was not shown that this March 2009 waiver vitiated the terms of the lease contract that Applicant signed in May 2008. Applicant has not acted responsibly within AG ¶ 20(b) by continuing to disregard a court judgment.

Neither AG ¶ 20(c) nor AG ¶ 20(d) is established without some effort on his part to address the debts. A creditor charge-off is an account transfer made when a creditor no longer expects to be repaid. This is an accounting measure for tax purposes. Debts remain legally enforceable even after they are charged off. Applicant’s financial situation has improved. He has no new delinquencies on his credit record. He obtained new car loans in May 2014 for \$13,814 and in September 2015 for \$37,996. He paid off the May 2014 loan in June 2016 and obtained a new auto loan of \$22,870 in January 2017. He has made timely payments on these car loans and on his one active credit card account. Appeal Board precedent requires that “a person acts in such a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.”⁴ Applicant has not disproven his liability for \$16,542 in past-due debt. He has given priority to buying new cars while ignoring a civil court judgment. Concerns persist about his 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). 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

⁴ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). At the same time, Applicant has the burden of presenting evidence of relevant facts and circumstances to show why he should be granted security clearance eligibility notwithstanding the delinquent debt information on his credit record. By continuing to ignore evidence of a court-ordered financial judgment, Applicant places in doubt whether he can be trusted to comply with rules and regulations regarding the handling and safeguarding of classified information.

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). Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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.b:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge