DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	
----------	)	ISCR Case No. 15-03772
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his finances. Eligibility for access to classified information is denied.

History of the Case

On November 25, 2015, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 14, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on February 2, 2016, and responded to the FORM within the time permitted with a letter of explanation and current credit reports. Applicant's submissions were admitted as Items 6 and 7. The case was assigned to me on March 15, 2016.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts between 2011 and 2016 exceeding $118,000. Allegedly, these debts remain delinquent.

In his response to the SOR, Applicant denied responsibility for each of the listed debts. He claimed that based on his attached divorce decree of July 22, 2015, his ex-wife, who filed for bankruptcy and included creditor 1.a in her Chapter 13 petition, is responsible for the creditor 1.a debt, which the lender has since forgiven. (Items 2 and 3) He claimed his ex-wife assumed responsibility for the listed creditor 1.b debt and is the sole person responsible for the debt that no longer appears on his credit report. He acknowledged responsibility for the creditor 1.c debt under his divorce decree, but claimed (a) the debt no longer appears on his current credit reports and (b) the creditor would not accept payments on the included debt in her Chapter 13 bankruptcy petition. And, he denied any knowledge of the creditor 1.d and 1.e debts (student loans), which no longer appear on his current credit reports.

Findings of Fact

Applicant is a 49-year-old support engineer who was previously employed by a defense contractor. Based on his most recent JPAS entries, he continues to be sponsored by his current employer since at least July 2014. (H1) The allegations covered in the SOR and denied by Applicant will be addressed by the furnished documentation in the exhibit file and Applicant's post-FORM response.

Background

Applicant married in April 1987, separated in August 2011, and divorced in July 2015. (Items 2 and 3) He has no reported children from this marriage. (Item 3) Applicant has cohabited with another woman since May 2013.

Applicant enlisted in the Air Force in December 1984 and served 22 years of active duty with no discharge indicated in his electronic questionnaires for investigations processing (e-QIP). He attended college classes between August 2013 and May 2014 and reported no degree or diploma. (Item 3)

Applicant has been employed by his current employer since July 2014 as a support engineer. (Item 3 and HE 1) He reported unemployment between January 2013 and July 2014, but no breaks in employment since July 2014. (Item 3)

Finances

Between 2011 and 2013, Applicant accumulated five delinquent debts exceeding $123,000. Allegedly, these debts are Applicant's responsibility and remain unsatisfied. In July 2007, Applicant and his ex-wife purchased a home and financed their purchase with a $100,000 first mortgage. (Items 4-5) Records show that the mortgage became delinquent in 2013 when they separated and divorced. (Items 4-5) The defaulted mortgage held by creditor 1.a has a delinquent balance of $95,475, which remains unsatisfied according to Applicant's 2014 and 2015 credit reports. (Items 4-5)

As a part of Applicant's divorce decree, Applicant's ex-spouse was awarded possession of the residence and assumed responsibility for the loan. (Items 2 and 6) After his ex-wife filed for Chapter 13 bankruptcy relief in November 2011, Applicant received a letter from creditor 1.a forgiving the amount owed on the debt. The debt, in turn, no longer appears on Applicant's current credit reports. (Item 6)

Applicant incurred two other delinquent debts since his divorce. Both of the listed debts he disputes. His dispute with creditor 1.b on a $262 utility debt involves an internet account that was assigned to his wife for payment responsibility as a part of her divorce decree. (Items 2 and 6) Credit reports reveal that this creditor 1.b account was opened jointly in 2013 and was assigned to collection in 2014. (Item 5) It is not listed in his divorce decree and it is unclear what steps Applicant initiated with the creditor (if any) after his wife's bankruptcy was dismissed in November 2012. Although the debt does not appear in Applicant's December 2015 and January 2016 credit reports (Items 2 and 6), reasons for it's removal from his most recent credit reports are not explained.

Without more information from Applicant about this debt, the debt cannot be resolved in his favor based only on evidence of its removal from his credit report. Debts can be removed from a credit report for reasons unrelated to payment or mistake, and payment of debts no longer reported in a credit report should never be presumed.

In his dispute of the creditor 1.c debt, Applicant claimed that he paid on the debt until 2011. (Item 2) Credit reports show that Applicant and his wife opened a line of credit with creditor 1.c in July 2005 for $36,242. (Item 6) By 2011, the debt had been reduced to $23,756. After his ex-wife included this defaulted line of credit debt in her Chapter 13 bankruptcy petition, the creditor would no longer permit him to make payments on the debt. (Items 2 and 6) His current 2016 credit report confirmed his dispute of the debt. (Item 6) Applicant provided no explanations, though, as to why he did not approach the creditor with a payment initiative after his ex-wife's bankruptcy was dismissed in November 2012. Without more information from Applicant as to what payment initiatives he made to creditor 1.c (if any) since his wife's bankruptcy dismissal in November 2012, this debt cannot be favorably resolved.

The remaining debts listed in the SOR consist of two reported individual educational accounts opened in July 2010 and closed in July 2014: one for $1,884 and the other for $759. (Item 4) Applicant's 2014 credit report reveals that both accounts were closed in July 2014 with respective past-due balances of $2,845 and $1,146.

(Item 4) Neither of these education debts are listed in Applicant's most recent 2016 credit reports and cannot be otherwise corroborated. Applicant's disputes of these reported debts in his 2014 credit report are not accompanied by documentation of the basis of the disputes. Applicant's listed debts cannot be favorably resolved without more information about these listed student loans and how he financed his education.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of

> judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin,* 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988).

Analysis

Applicant is a fully employed support engineer for a defense contractor who accumulated delinquent debts exceeding $118,000. One of the listed debts (creditor 1.a) has been forgiven and is resolved favorably to Applicant. Two of the listed debts (creditors 1.b and 1.c) have never been paid or otherwise resolved by Applicant and remain outstanding. The remaining two listed debts (creditors 1.d and 1.e) continue to be disputed by Applicant, but lack documentation of his claims that the debts do not belong to him.

Applicant's collective accumulation of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c), "a history of not meeting financial obligation," apply to Applicant's situation.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. *See Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Applicant's listed delinquent debts were reported in one or both credit reports issued in 2014 and 2015. (Items 4 and 5) Credit reports do create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can "normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) Applicant does not dispute the accuracy of the admitted credit reports, (save for the ¶¶ 1.d and 1.e debts attributed to him).

Applicant denied responsibility for any of the five debts listed in the SOR. Only his creditor 1.a debt is accompanied by documentation of the resolution of the debt. The remaining four debts that he disputes lack documentation of steps he has taken since the dismissal of his ex-wife's Chapter 13 petition to either resolve the debts with the creditors (creditors 1.b and 1.c) or provide documented evidence of his disputes with creditors 1.d and 1.e. about the reported student loans. (Items 4-5) Without more information from Applicant about his debt delinquencies, detailed assessments of his reported delinquent debts cannot be made. Based on the documented materials in the FORM, none of the mitigating conditions under Guideline F are available to Applicant.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts still unpaid and unresolved. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances. While unanticipated financial burdens might have played a considerable role in his failures to address his delinquent debts, Applicant failed to provide more specific explanatory material for consideration.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his lapses in judgment associated with his accumulation of delinquent consumer and education debts covered in his credit reports.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual of delinquent consumer and education debts, and his lack of more

specific explanations for his debt accruals and lack of documented resolution of them, it is still too soon to make safe predictions of Applicant's ability to satisfactorily resolve his debts and restore his finances to stable levels.

More time is needed to facilitate's Applicant's making the necessary progress with his creditors to facilitate conclusions that his finances are sufficiently stabilized to permit him access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.b through 1.e. Favorable conclusions are warranted with respect to the allegation covered by subparagraph 1.a.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subpara. 1.a:	For Applicant
Subparas. 1.b through 1.e:	Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

_____
Roger C. Wesley
Administrative Judge