



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No: 19-03847  
)  
)  
Applicant for Security Clearance )

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

07/16/2020

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Decision  
\_\_\_\_\_

DAM, Shari, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns related to his delinquent debts. Based on a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of the Case**

On February 28, 2020, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing on March 25, 2020, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2) On May 4, 2020, Department Counsel mailed Applicant the Government's written case. He received a complete copy of the File of Relevant Material (FORM), containing five Items, on May 13, 2020. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted additional information, and did not object to the Government's Items. I marked that information as Applicant Exhibit (AE) A. Items 1 through 5 and AE A are admitted into evidence without objection. DOHA assigned the case to me on June 19, 2020.

### **Findings of Fact**

Applicant denied the six allegations contained in the SOR on the basis that the statute of limitations (SOL) expired on the delinquent debts and that he is no longer obligated to pay them. (Item 2)

Applicant is 55 years old and has been married since 1996. He has five children. He served on active duty in the U.S. Army from 1985 to 1989 and received an honorable discharge. He has been steadily employed since 2010, with the exception of one month in 2017 when he was unemployed between positions. In January 2019, he started a position with a defense contractor. (Item 3)

Applicant attributed his delinquent debts to medical bills he accumulated between 2012 and 2013, when his son experienced serious mental health issues resulting in inpatient and outpatient treatment. Applicant's medical insurance did not cover many of those bills, so he paid them. As a consequence, he did not have sufficient money to pay his family's living expenses and maintain payments on debts. He contemplated filing a Chapter 13 bankruptcy, but determined it would be to his financial benefit to allow the SOL to expire on the debts, which would eliminate his legal responsibility for them. (Item 2 at 3)

During a background interview in May 2019, Applicant stated his financial status was "healthy." (Item 4 at 5) He told the interviewer that he contributes to his 401(k) pension plan and stays on a budget. He has not participated in financial counseling. (*Id.*)

Based on an April 2019 credit bureau report (CBR), the SOR alleged six delinquent debts that totaled about \$32,000 and arose between 2010 and 2016. Applicant stated that some debts were cancelled, that he received Internal Revenue Forms 1099-C for them, and he paid taxes on them. (Item 2 at 3) He did not submit documentation confirming those assertions.

Applicant submitted a February 2020 CBR to show that many of the alleged delinquent debts are no longer listed by that agency. (AE A) However, that CBR still shows the delinquent debt alleged in SOR ¶ 1.d for \$1,129, and lists his last payment as June 2013.

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

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. Financial distress can also be caused by 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 acts or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. (See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

In about 2010, Applicant began accumulating debts related to his son's medical conditions, which he was unable to pay. However, later he decided not to pay them and relied on the expiration of the SOL to remove his legal liability for them, demonstrating his unwillingness to pay valid debts. The record establishes the above disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 sets out five conditions that could potentially mitigate financial security concerns under this guideline:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial 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.

With sufficient support from the record evidence, the SOR alleges six delinquent debts totaling about \$32,000, which arose over a period of six or seven years. Applicant did not pay or resolve any of the debts and asserts he is no longer legally responsible for them because five of them do not appear on his recent CBR. One debt, from 2013, continues to appear. He did not provide any evidence to establish mitigation under AG ¶ 20(a). Applicant stated that the delinquent debts arose during a period when his son experienced serious mental health problems, for which Applicant did not have insurance. Those were conditions largely beyond Applicant's control. However, Applicant did not produce evidence that he acted responsibly under those conditions. The evidence establishes partial mitigation under AG ¶ 20(b).

Applicant has not participated in financial counseling, and there is no credible evidence that he took responsible actions to recently pay or resolve the alleged delinquent debts. AG ¶ 20(c) does not apply. He did not provide evidence that he ever attempted to make payments on the debts, including the one that is listed on his 2020 CBR. AG ¶ 20(d) does not apply.

Applicant reported that five of the six delinquent debts alleged in the SOR have been deleted or no longer appear on his credit report, implying that he is not responsible for them. In order to establish mitigation under AG ¶ 20(e), Applicant must provide evidence that he had a reasonable basis to dispute the legitimacy of the past-due debts or otherwise took actions to resolve the issues. The fact that a creditor has charged off or deleted a debt is not a valid basis to mitigate a debt under AG ¶ 20(e). "Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not

legitimate or that they have been satisfactorily resolved.” ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)). Applicant failed to establish mitigation under this guideline for security concerns arising from any of the debts.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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) 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a 55-year-old man who served in the U.S. Army for four years. He is married and has five children. He has been steadily employed since 2010. In or around 2012, his son began experiencing serious mental health issues that continued for the next year or longer and resulted in expensive medical costs not covered by his insurance. While paying some of those costs, he was unable to maintain payments on other living expenses and debts. Subsequently, six delinquent debts accumulated and totaled about \$32,000 at the time the SOL issued. Instead of resolving any of those debts, he chose to allow the SOL to expire on his legal responsibility, and at least five of the six debts have been removed from his 2020 CBR.

Generally, the Appeal Board has held that debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable. (See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007).

The Appeal Board further noted that reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability. It has limited probative value in addressing [security] concerns arising out of financial issues. See, e.g., ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). A [security] adjudication is not aimed at collecting an applicant's personal debts. Rather it is aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's [security] eligibility.

Applicant failed to meet his burden of persuasion. There is insufficient evidence to overcome the security concerns raised by his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge