



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



In the matter of:)
)
) ISCR Case No. 19-02855
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Paul Malone, Corporate Security Director
05/28/2021

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by his delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on March 22, 2018. On November 21, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on December 26, 2019, and requested a hearing before an administrative judge (Answer). The case was assigned to me on June 3, 2020, but the hearing was delayed due to the COVID-19 pandemic. On March 8, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 1, 2021, and it was convened as scheduled via video teleconference on the Defense Collaborative Service.

At the hearing, Department Counsel withdrew SOR ¶ 2, the personal conduct security concern. Government Exhibits (GE) 1 through 5 and Applicant Exhibit (AE) A were admitted without objection, and Applicant testified. I marked the March 4, 2021 prehearing scheduling order as Hearing Exhibit (HE) I and Department Counsel's

February 12, 2020 discovery letter as HE II. DOHA received the transcript (Tr.) on April 14, 2021, and the record closed.

Findings of Fact

Applicant is 49-years-old and has been married to his third wife since 2015. He has a 26-year-old daughter and 23-year-old son from his first marriage, and his wife has three adult children. His 23-year-old stepdaughter resides with them. They provide his son, his 22-year-old stepson, and the above mentioned stepdaughter with some financial support. Applicant received an associate's degree in 1993. He has worked for defense contractors almost continuously since 1991, and he has worked as an electronic technician for his current employer since June 2017. He first applied for a security clearance in 1991 and has continuously held classified access since 1991. (GE 1; GE 5; Tr. 11-14, 25-27, 57)

The SOR alleged that Applicant has 16 delinquent debts, totaling \$36,523. In his response to the SOR, he admitted all of the allegations, except SOR ¶ 1.h. Each of the debts alleged in the SOR were confirmed by Applicant's three credit bureau reports (CBR) dated April 2018, April 2019, and March 2021, respectively. (Answer; GE 2; GE 3; GE 4; GE 5 at 3-5)

Applicant attributed his financial delinquencies primarily to a three-month period of unemployment following his June 2014 termination. At the time, he was earning approximately \$70,000 a year. He was then was underemployed for the next three years, and he earned significantly less than he did prior to his June 2014 termination. Additionally, Applicant testified that his 2004 and 2011 divorces, child support obligations, and the additional financial support he provided to ill family members also contributed to his financial issues. (GE 1; GE 5; Tr. 21-22, 25, 28-33, 50)

Prior to his 2014 termination, Applicant had missed a few child support payments, but none of his debts had been placed for collection. The debts alleged in the SOR became delinquent between July 2014 and 2018. They consist primarily of consumer debts, loans, and credit cards. Applicant also has five outstanding medical bills totaling \$441. (GE 2; GE 3; GE 4; Tr. 29-30, 33-38, 41-45, 51)

After he was fired in 2014, Applicant consulted with an attorney regarding his financial difficulties. The attorney advised Applicant to focus on his current bills rather than address his debts that had been placed for collection or charged off by creditors. Shortly after he started working for his current employer, in 2017, Applicant met with a financial counselor who explained credit to him and credit scores, and they developed a plan to pay his bills and manage a written budget. As of the hearing, he used Credit Karma and monitored his credit with the credit bureau agencies. (Tr. 21-22, 38-39, 52-54, 60)

In 2020, Applicant contacted "a couple of" the creditors of his smaller debts. He learned that the outstanding balances were larger than he realized; therefore, he contacted another attorney. This attorney recommended that Applicant "stop the bleeding" and work within a budget. Shortly thereafter, due to the COVID-19 pandemic, Applicant's wife's hours were reduced from 40 to 20 or 25 hours a week, reducing her

income to \$30,000 annually. Because of her reduced income, they were unable to afford to address any of their outstanding debts. (Tr. 21-23, 25-26, 40-42)

Applicant denied SOR ¶1.h. At one time, he had multiple loans with this payday loan company, and he testified that he had resolved all outstanding loans. In his opinion, this debt was erroneously reported. As of the hearing, he had not contested it with the creditor or the credit bureau agencies. (Tr. 43-44, 51-52)

Applicant has made no payments toward any of the alleged debts, but he has no new delinquent debts or obligations. He owes approximately \$2,000 to the federal government for unpaid taxes owed from a 401k loan that he took out in 2017. He is not in a payment installment agreement with the Internal Revenue Service (IRS), but makes sporadic payments. His last payment was in 2020. This debt was not alleged in the SOR; therefore, it is not disqualifying, but it will be considered within the Guideline F mitigation analysis and whole-person analysis. (Tr. 24, 32-33, 47, 54-55)

Applicant intends to resolve his delinquent debts. At the hearing, he admitted that paying his delinquent debts was not a priority in the past, but he recognized the importance of resolving his debts. Applicant and his wife are trying to generate more income to resolve their outstanding debts. She is looking for another job that has a higher salary, and he started a real estate business in 2020, but it had not earned any income as of the hearing date. (Tr. 49, 56-60)

Since June 2017, Applicant has earned approximately \$69,000 annually. His wife is an office manager for a dental practice and currently earns \$30,000 annually. He has approximately \$25,000 in his 401k and \$50,000 invested in cryptocurrency. Applicant has a net monthly remainder of \$800. (Tr. 26, 32, 40, 46, 50-51, 55)

Applicant provided copies of his 2019 and 2020 work performance evaluations. He is considered a strong performer and a valued employee. (AE A)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 to be used 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, administrative judges apply the guidelines in conjunction

with the factors listed in 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."

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 concern under Guideline F (Financial considerations) is set out 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 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;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues started after he was fired from his employer in 2014. He struggled to regain employment with a commensurate salary until 2017. His finances were also negatively affected by his divorces, child support obligations, and other family-

related financial support. In March 2020, Applicant's wife's salary was greatly reduced due to the COVID-19 pandemic. Applicant sought financial counseling, and as a result follows a budget and lives within his means. However, he has not initiated any actions to resolve his existing delinquent debts. Many of the conditions that contributed to Applicant's financial problems were beyond his control, but he has not demonstrated that he acted responsibly to address his delinquent debts.

Applicant has worked for his current employer for almost four years, but he has failed to address any of the debts alleged in the SOR, small or large. Although he has no new delinquent consumer debts, Applicant's financial issues continue to be an ongoing concern. He has a \$2,000 federal income tax debt from 2017. As of the date of the hearing, he had not established payment arrangements with the IRS. Finally, although Applicant denied SOR ¶ 1.h, he failed to provide proof to substantiate his claim that it is not a valid debt. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) was not established.

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) 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a – 1.p:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph: 2.a:	Withdrawn

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge