



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



In the matter of:)	
)	
)	ISCR Case No. 19-02923
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On November 27, 2019, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on December 23, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 24, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2020, scheduling the hearing for April 7, 2020. The hearing was canceled due to the

COVID-19 pandemic. On May 27, 2021, a notice of hearing was issued scheduling the hearing via the Defense Collaboration Services (DCS) system. I convened the hearing as scheduled on June 9, 2021. The Government offered exhibits (GE) 1 through 6. There were no objections and the exhibits were admitted into evidence. Applicant testified and did not submit any exhibits. DOHA received the hearing transcript on June 24, 2021.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He is a high school graduate and has earned some college credits. He married in 2008. His wife had a child that he adopted, and they also have two other children. Their ages are 26, 20 and 18. Applicant has worked for his current employer since 2018. (Tr. 15-18)

In 2015 Applicant had a motorcycle accident and was severely injured. He had two surgeries on his back, and he was unable to work for about three years. His job involved manual labor. He was working at the time and was later terminated. He was cleared to resume work in late 2017 or early 2018. Applicant attributed his financial problems to his accident and being unable to work. His wife was working during this time and continues to work, but her income was insufficient to cover all of their family's expenses. Applicant also acknowledged that he had some debts prior to his accident that he had difficulty paying. (Tr. 18-22, 34-36, 45-47)

Initially, Applicant attempted to contact some creditors to negotiate settlements or repayment plans, but was unable to do so because they either demanded the full amount be paid or the payment plans were more money than he could afford. More recently, Applicant has contacted some creditors, but the debts had been sold to third-party collection companies, and they wanted full payment of the debts. He has been unable to make payments on any of his delinquent debts due to the amounts owed. (Tr. 22-23, 39-42)

The delinquent debts alleged in the SOR are corroborated by Applicant's admissions, statements to a government investigator, and credit reports from August 2019, February 2020, and May 2021. A review of the May 2021 credit report shows that the accounts in SOR ¶¶ 1.b, 1.g and 1.k were resolved by dispute. (GE 1 through 6)

Applicant's son attends college and receives a scholarship for his tuition, but Applicant pays for his room and board, which is about \$5,000 a semester. His older daughter is independent, and his younger daughter lives at home. He and his son have cars. One is paid for and the other is financed. His wife drives a car that is leased. Applicant also owes about \$50,000 for student loans. These loans are in deferment, which Applicant indicated expires sometime at the end of this year. He anticipated his payments to be approximately \$250 a month. (Tr. 23-26)

Applicant stated he intended to pay his delinquent debts, but at this time does not have the resources. He would like to consolidate his debt when he is able. He estimated his annual salary is about \$27,000 and his wife's is about \$23,000. Over the three years he was unable to work, he estimated his out-of-pocket medical expenses were about \$10,000. He lost his medical insurance when he lost his job after his accident. He used credit cards to help pay his expenses and at times had difficulty paying his rent and providing for his family. His parents helped them out. Applicant currently lives paycheck to paycheck. (Tr. 25, 29-35, 49-50)

Applicant stated that he used Credit Karma to dispute some of his delinquent debts to have them removed from his credit report. He had questions about the amounts owed and believed there were inaccuracies on his credit report. He did not provide any supporting documents. (Tr. 47-53)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to 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 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 concern relating to the guideline for 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has numerous delinquent debts that remain unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; 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.

Applicant attributed his financial problems to a motorcycle accident he had in 2015. He had surgeries and lost his job and medical insurance. He was unable to pay his debts. These were conditions beyond his control. He testified that he contacted creditors in the past to resolve his debts, but he has been unable to do so because he does not have the money. His debts remain unresolved. He stated that he disputed some debts to have them removed from his credit report. I have given him credit for those accounts that are on his latest credit report that note they were resolved. He did not provide any documents to substantiate other disputes or actions to resolve his debts. AG ¶ 20(b) partially applies, but Applicant did not provide evidence that he has acted responsibly under the circumstances. His debts are recent and ongoing. There is insufficient evidence to fully apply any of the above mitigating conditions.

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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant was in a serious accident in 2015. He was unable to pay his bills at the time. He is unable to meet the creditors' demands to resolve his delinquent debts. At this juncture, he has an unreliable financial track record, and he has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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:	Against Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.j	Against Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l-1.t:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge