



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



In the matter of:)
)
) ISCR Case No. 20-00978
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2021

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 12, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

With an undated response, Applicant answered the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on January 21, 2021. The evidence

included in the FORM is identified as Items 3-7 (Items 1-2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on January 25, 2021. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file objections to the Government's evidence and he submitted two exhibits (AE A and B (AE A consists of Applicant's May 20, 2021 letter and 10 accompanying pages; AE B consists of a series of emails referring to Applicant submitting a response to the FORM)). All exhibits are admitted into evidence without objections. The May 25, 2021 transmittal letter from the Government is marked as an administrative exhibit (AD I). The case was assigned to me on June 22, 2021.

Findings of Fact

Applicant admitted nine of the SOR allegations (SOR ¶¶ 1.b-1.f, 1.h-1.i, and 1.k-1.l), with explanations, and denied three allegations (SOR ¶¶ 1.a, 1.g, and 1.j). The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 28 years old. He has worked for a federal contractor since April 2018. He has had periods of unemployment from June 2017 to January 2018; October 2012 to April 2013; and October 2011 to April 2012. He received his high school diploma in 2011. He is single, never married and has no children. He cares for and provides financial support to his mother. (Item 3)

The SOR alleged 12 delinquent debts totaling approximately \$41,479. The debts are comprised of collections accounts and charged-off accounts (auto repossession, credit card, consumer debt, and medical debts). The debts are established by credit reports from January 2021 (incorrectly dated in the FORM as January 15, 2020), October 2019, and July 2018, and his SOR admissions. (Items 2, 4-6)

Applicant attributes his financial problems to bearing the financial responsibility for supporting his infirm mother and before he passed away, his stepfather. He also had his own medical conditions, which were not fully covered by his medical plan, and periods of unemployment. He disputed information on the credit reports without providing documentation supporting the disputes. He also pointed out that he has paid several accounts not listed on the various credit reports. He also described some of the various charitable and civic organizations he has worked with in the past. (Item 2; AE A)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$10,290 charge off. This is an auto repossession account opened in June 2014. Applicant admitted having an auto voluntarily repossessed in 2014, but claimed that he did not have any knowledge of this creditor. He claimed his dealings were with the creditor listed in SOR ¶ 1.d. He did not provide any documentation supporting his dispute or documents that show this account is a duplicate of the debt listed in SOR ¶ 1.d. This debt is unresolved. (Items 2, 4-6; AE A)

SOR ¶ 1.b-\$6,791 charge off. This is an account with a financial institution opened in August 2014, which went delinquent in 2015. Applicant admitted this account and has expressed his intent not to pay the account, but let it “fall off my credit.” This debt is unresolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.c)-\$6,811 charge off. This is an account with a financial institution opened in October 2013, which went delinquent in 2015. Applicant admitted this account and has expressed his intent not to pay the account, but let it “fall off my credit.” This debt is unresolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.d)-\$6,034 collection. Applicant claims this debt is a duplicate of SOR debt ¶ 1.a. He failed to supply documentation supporting his assertion. It was assigned to this creditor in March 2015. It reflects a first delinquency of July 2014 and remains unpaid. This debt is unresolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.e)-\$5,479 charge off. This is an account with a financial institution opened in April 2014, which went delinquent in 2015. Applicant admitted this account and has expressed his intent not to pay the account, but let it “fall off my credit.” This debt is unresolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.f)-\$1,355 collection. This is a credit-card account assigned in January 2015, which first went delinquent in 2014. Applicant admitted this account and has expressed his intent not to pay the account, but let it “fall off my credit.” This debt is unresolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.g)-\$1,120 collection. This is a medical debt assigned in September 2017, which went delinquent in June 2017. Applicant claimed he was disputing this debt based upon an alleged Health Insurance Portability and Accountability Act (HIPAA) violation. He failed to produce documentation to support his dispute. This debt is unresolved. (Note: The payment of \$1,120 reflected in AE A, may be toward this debt, however, Applicant fails to identify it as such and no other evidence in the record connects the SOR debt with this payment. Even if I considered the payment identified in AE A as paying this debt and finding for Applicant on this allegation, it would not change the overall result). (Items 2, 4-6; AE A)

(SOR ¶ 1.h)-\$1,097 charge off. This is an account with a financial institution (credit card) opened in February 2014, which went delinquent in September 2014. Applicant admitted this account and has expressed his intent not to pay the account, but let it “fall off my credit.” This debt is unresolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.i)-\$564 collection. This is a utilities debt assigned in June 2019. It reflects a first delinquency of July 2017. Applicant provided documentation showing that a successor creditor was paid in April 2021. This debt is resolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.j)-\$435 collection. This is a medical debt assigned in November 2020. It reflects a first delinquency of June 2015. Applicant provided documentation showing

that a successor creditor was paid in April 2021. This debt is resolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.k)-\$225 collection. This is a consumer debt assigned in September 2014. It reflects a balance date of July 2017. Applicant provided documentation showing that the debt was settled in April 2021. This debt is resolved. (Items 2, 4-6; AE A)

(SOR ¶ 1.l)-\$1,099 charge off. This is an account with a financial institution (credit card) assigned in April 2014, with a balance date of June 2018. Applicant admitted this account and has expressed his intent not to pay the account, but let it “fall off my credit.” This debt is unresolved. (Items 2, 6; AE A)

(Non-SOR debt)-\$1,120 payment. Applicant presented documentation that in April 2021, he made a payment to a collection company in the stated amount. He does not relate this payment to any SOR debt. This payment is noted (See SOR ¶ 1.g above). (AE A)

Other than stated above, Applicant did not provide any documentation showing his current financial status or any consultations with financial counselors. He provided screen shots that several collection accounts were removed from his credit report. That documentation did not state which accounts were removed or why they were removed. (AE A).

Policies

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 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(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, 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 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 an 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant has approximately \$40,000 of delinquent debt, some of which relates back to 2014. With the exception of recently paying three of the smaller debts, the larger debts remain unaddressed by him. He stated that he did not intend to pay the larger debts, but rather he would let them fall off his credit report due to the passage of time. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; 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 has a long history of financial difficulties. The SOR debts are recent and all but three small debts remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. While Applicant dealt with financial conditions beyond his control (supporting his parents, his periods of unemployment, and his own medical issues), I find he has not acted responsibly in trying to resolve his debts. He has chosen to allow the passage of time to remedy his bad credit reports. While this method may clean up his credit, it fails to advance his security worthiness. His efforts to resolve three small SOR debts and another non-SOR debt are commendable but insufficient to conclude that his overall financial problems are being resolved or are under control. Likewise, he has failed to establish a good-faith effort to resolve his remaining delinquent debts. There is no evidence Applicant

used a financial counselor. He failed to support his debt disputes with any documentation. AG ¶¶ 20(b), 20(c), 20(d), and 20(e) do not apply.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, including his financial support for his parents, his periods of unemployment, his own medical issues, and his charitable and civic contributions. Nevertheless, Applicant has not established a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all 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 – 1.h; 1.l:	Against Applicant
Subparagraphs 1.i - 1.k:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge