



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03450
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2021

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 January 30, 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 CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 March 14, 2020, and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 15, 2021, and the hearing was convened as scheduled on May

19, 2021, using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified and offered exhibits (AE) A-B. The record was kept open until June 30, 2021, to allow Applicant to submit additional evidence. He submitted AE C-D, which are admitted without objections. DOHA received the hearing transcript (Tr.) on May 28, 2021.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 36-year-old employee of a federal contractor performing the duties of a uniform protection officer. He began working at his present job in June 2018. He also has a second job in the nongovernment private sector. He earned his bachelor's degree in 2009. He has never married. He has one child, age 15, with whom he shares legal and physical custody with the child's mother. (Tr. 6, 21-22, 24-26; GE 1, 3)

The SOR alleged eight delinquent accounts (student loans, car repossession, credit cards, and consumer debts) totaling approximately \$36,450. The debts are established by credit reports from July 2018, October 2019, and April 2020; Applicant's personal subject interview (PSI) with a defense investigator in June 2019; and his SOR admissions. (SOR ¶¶ 1.a – 1.h) (AE 2-5; Answer to SOR)

Applicant explained that his financial difficulties were caused by trying to raise his child while attending college, helping his mother with her bills, and short periods of unemployment between regular jobs. On February 11, 2021, Applicant entered into a five-month contract with a debt relief company (DRC) whereby the DRC would negotiate settlements with his creditors and perform other actions to repair his credit. Applicant paid \$4,000 for this service. At the end of five months (July 12, 2021), Applicant would need to execute a new contract with the DRC. It is unclear whether Applicant would have to pay an additional \$4,000 to have the DRC continue acting on his behalf. He was advised by the DRC to pay his smaller debts first then work his way up to the larger balances. (Tr. 30-31; AE C)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$11,614. This debt resulted from a car repossession. Applicant opened this loan in 2014, and in 2018 the car was repossessed for non-payment and a deficiency balance accrued to him. He has not made any payments toward this debt. He is following the DRC plan and waiting to pay smaller debts before he pays this one. This debt is unresolved. (Tr. 42-45; GE 3)

SOR ¶ 1.b-\$9,117. Applicant opened this credit card in 2013 and it became delinquent in 2015. He has not made any payments toward this debt. He is following the

DRC plan and waiting to pay smaller debts before he pays this one. This debt is unresolved. (Tr. 44-45; GE 3-4)

SOR ¶¶ 1.c-1.e, 1.g-\$4,318; \$4,198; \$4,138; \$2,159. Applicant incurred his student loans in approximately 2007 and they became delinquent in 2015. Up until his hearing, he had not contacted his loan servicing agency about trying to rehabilitate his loans. He was following the DRC's advice and waiting to deal with these debts after he paid some of his smaller debts. Post-hearing, Applicant contacted a company that will assist him in rehabilitating his student loans with him paying \$5 a month beginning October 1, 2021. These debts are unresolved. (Tr. 45; GE 3; AE D)

SOR ¶ 1.f-\$3,355. Applicant opened this credit card in 2015 and it became delinquent in 2019. He documented two payments of \$850 each settling this debt in May 2021. He used the DRC's strategy to pay this debt. This debt is resolved. (Tr. 32-37, 39; GE 4; AE B)

SOR ¶ 1.h-\$456. Applicant opened this credit card in 2008 and it became delinquent in 2017. He documented a payment of \$214 settling this debt in April 2021. He used the DRC's strategy to pay this debt. This debt is resolved. (Tr. 37-38; GE 4; AE B)

Applicant paid a non-SOR debt in the amount of \$351 in May 2021. (Tr. 40-41; AE B)

Applicant testified that he is paying all his current financial obligations. Based upon budget information he gave during his testimony, his monthly residual after paying all expenses is approximately \$500. Other than hiring the DRC (during his testimony, Applicant sometimes referred to the DRC as a "law firm"), there is no evidence that Applicant received any financial counseling. He claimed that all his federal and state tax returns were filed and any taxes owed were paid. (Tr. 50-57, 60-61)

Applicant provided two letters from work supervisors who have worked with him since 2018. They described Applicant as honest, forthcoming, dependable, and responsible. (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; and
- (c) a history of not meeting financial obligations.

Applicant incurred multiple delinquent debts including student loans, of which all but two remain unpaid or unresolved. I find both disqualifying conditions are raised.

Although President Biden extended a pause on the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-student-loan-payments/>), that action does not excuse previously delinquent student loans. (See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021))

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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent because they are ongoing and, although he recently paid two smaller debts after the SOR was issued, he has chosen not to address his larger debts because the DRC he hired recommended this action. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant experienced financial difficulties from raising his child while attending college, helping his mother pay her debts, and unemployment. These were circumstances beyond his control. However, he did not act responsibly when he failed to attempt to resolve his debts until after the SOR was issued. AG ¶ 20(b) is not fully applicable.

Applicant did not present evidence of financial counseling other than his contract with the DRC. His track record to date does not support a good financial picture. Additionally, he failed to put forth a good-faith effort to resolve his debts. His two largest consumer debts remain unaddressed and he only initiated efforts to rehabilitate his delinquent student loans after the hearing. Unfortunately, his actions are too little, too late. Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply, except to SOR debts ¶¶ 1.f and 1.h.

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 relevant 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.

I considered Applicant's difficulties in raising a young child while attending college, financially assisting his mother, working two jobs, paying a non-SOR debt, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I

considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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.e, 1.g:	Against Applicant
Subparagraphs: 1.f, 1.h:	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