



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03311
)
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 May 4, 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; 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 May 28, 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 16, 2021, and the hearing was convened as scheduled on May 4, 2021, using the Defense Collaboration Services (DCS) video conferencing capabilities. The

Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified and offered exhibit (AE) A. The record was kept open until June 30, 2021, to allow Applicant to submit additional evidence. He failed to submit any additional evidence. DOHA received the hearing transcript (Tr.) on May 24, 2021.

Findings of Fact

In his SOR answer, Applicant admitted some of the allegations, with explanations, and denied others. 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 43-year-old employee of a defense contractor. He began working at his present job in July 2018. He served on active duty in the U.S. Army from 2004 until he has honorably discharged in May 2014. He deployed to Iraq twice and to Afghanistan once. He was awarded at least one Army Commendation Medal and Army Achievement Medals for his service. He also served in the Army Reserve from 2014 to 2016 when he was discharged. He has a high school diploma and has taken some college courses. He is divorced and has two children from his marriage, for whom he was obligated to pay child support. (Tr. 6, 22-26; GE 1, 3)

The SOR alleged nine collection accounts and seven charged-off or past-due debts (student loan, child support, credit cards, and consumer debts) totaling approximately \$29,500. The debts are established by credit reports from March 2018, May 2019, and November 2020; Applicant's personal subject interview (PSI) with a defense investigator in October 2018; and his SOR admissions. (SOR ¶¶ 1.a – 1.p) (AE 3, 5-7; Answer to SOR)

Applicant explained that his financial distress began when he incurred some debts while still in the Army and after his divorce in 2012. He also was unemployed from September 2016 to July 2017, which caused him to get behind on his debt payments. Before his hearing, he contacted a bankruptcy attorney about possibly filing for bankruptcy protection, but at this point he has not pursued it beyond the initial contact. In July 2020, he hired a debt repair company (DRC) to clean up his credit report. He stated that they did some positive work, but he believed he could do what the company was doing without paying the fee. He was paying approximately \$89 a month for this service. He stopped in November 2020. (Tr. 25, 46; GE 3)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$10,782. Applicant incurred this credit-card debt while in the military. He claims that he is making monthly payments of \$240 that come directly out of his paycheck, which began in October 2020. He stated that he could provide six months of supporting documentation showing his payments. He was given until June 30 from the date of hearing to provide this documentation, but he failed to do so. This debt is unresolved. (Tr. 29-30)

SOR ¶ 1.b-\$4,380. Applicant incurred this debt while he was in the Army when he took out a loan to visit his children. Once he was discharged, he could no longer afford the payments and this debt became delinquent. He claimed that he contacted the creditor to work out a payment plan and promised to submit supporting documentation. He failed to do so. This debt is unresolved. (Tr. 38-39)

SOR ¶ 1.c-\$3,269. Applicant disputed this debt during his hearing testimony and a credit report supports that dispute. His most recent credit report does not list this debt. This debt is resolved. (Tr. 40-43; GE 6, 7)

SOR ¶ 1.d-\$2,509. Applicant incurred this education debt in approximately 2016, when he attended college. He could not keep up with the payments when he was unemployed. He claimed to have contacted the school about two years ago to work out a payment plan. Nothing has happened since then. He plans to contact the school again. This debt is unresolved. (Tr. 43-44)

SOR ¶ 1.e-\$1,936. This debt is from Applicant's delinquent child support obligation. He acknowledged that he fell behind in his payments when he was unemployed and he was only receiving unemployment payments. He claimed that he paid his outstanding support delinquency and had documentation to support his claim. He failed to provide this documentation. This debt is unresolved. (Tr. 33-34)

SOR ¶ 1.f-\$1,375. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (SOR Answer; GE 6)

SOR ¶ 1.g-\$1,000. Applicant denied this debt. He claimed this debt was paid in 2018, but he failed to provide any supporting documentation. This debt is unresolved. (Tr. 47)

SOR ¶ 1.h-\$717. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (Tr. 45; SOR Answer; GE 6)

SOR ¶ 1.i-\$579. Applicant admitted this debt. He claimed this debt was paid directly from his paycheck. He committed to provide supporting documentation, but failed to do so. This debt is unresolved. (Tr. 36-37)

SOR ¶ 1.j-\$502. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (Tr. 45; SOR Answer; GE 6)

SOR ¶ 1.k-\$447. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (Tr. 45; SOR Answer; GE 6)

SOR ¶ 1.i-\$401. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (SOR Answer; GE 6)

SOR ¶ 1.m-\$335. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (SOR Answer; GE 6)

SOR ¶ 1.n-\$514. Applicant admitted this debt. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (SOR Answer; GE 6)

SOR ¶ 1.o-\$446. Applicant denied this debt. He failed to offer supporting evidence of a legitimate dispute. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (SOR Answer; GE 6)

SOR ¶ 1.p-\$292. Applicant denied this debt. He failed to offer supporting evidence of a legitimate dispute. There is no evidence that payments have been made to this creditor or that a payment plan was established. This debt is unresolved. (SOR Answer; GE 6)

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 \$2,098. Other than hiring the DRC, and consulting with a bankruptcy attorney, there is no evidence that Applicant received any financial counseling. (Tr. 47-53)

Applicant provided a letter from a work colleague who has worked with him since 2018. He described Applicant as a hard-working professional who provided mission support in a number of areas. (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, of which all but one remain unpaid or unresolved. I find all 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's debts are recent and, although he successfully disputed one debt, he failed to produce supporting documentation that he has addressed the remainder of his debts. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant's divorce and unemployment were circumstances beyond his control. However, he did not act responsibly by failing to engage his creditors in an attempt to resolve his debts. AG ¶ 20(b) is not applicable.

Applicant did not present evidence of financial counseling. 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. Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply. Applicant successfully disputed SOR ¶ 1.c and AG ¶ 20(e) applies to that debt.

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 military service, including his three deployments, his decorations, 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.b:	Against Applicant
Subparagraph: 1.c:	For Applicant
Subparagraphs: 1.d-1.p:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge