



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



In the matter of:)
)
) ISCR Case No. 20-02891
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 20, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR in an undated document, and requested a decision on the written record in lieu of a hearing.

The Government’s written case was submitted on February 5, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 24, 2021. As of April 27, 2021, he had not responded. The case was assigned to me on May 20, 2021. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is 47 years old. He has been employed by a defense contractor since 2015. He served on active duty in the U.S. military from 1994 until he was honorably discharged in 1996. He is applying for a security clearance for the first time since he was in the military. He has an associate's degree, which he earned in 1999. The most recent information available indicates that he is married with two children. (Items 3, 4)

The SOR alleges two defaulted student loans totaling \$54,207 (SOR ¶¶ 1.a and 1.h); three miscellaneous delinquent debts totaling \$898 (SOR ¶¶ 1.b-1.d); and three unpaid medical debts totaling \$249 (SOR ¶¶ 1.e-1.g). Applicant admitted owing the two student loans. He provided mixed answers regarding the remaining debts. The alleged debts are listed on an August 2019 credit report, a March 2020 credit report, or both credit reports. (Items 2, 5, 6)

Applicant reported his defaulted student loans and a delinquent credit card debt (SOR ¶ 1.b -\$479) on his Questionnaire for National Security Positions (SF 86), which he submitted in August 2018. His explanation about his student loans has remained consistent. He thought he paid off his student loans in the 2003 to 2006 timeframe. He was contacted about them and made several payments, but then did not hear back from the holder of the loans. His tax refund was withheld on one occasion. He did not know what institution currently held the loans, so he was unable to set up payments. He wrote in his response to the SOR that he was finally more financially stable than he had been in the past, and he fully intended to clear the loans. (Items 2-6)

Applicant admitted owing the three miscellaneous debts, but he stated that he unsuccessfully attempted to pay the \$479 credit card debt alleged in SOR ¶ 1.b; he returned the item that was the basis for the \$268 debt alleged in SOR ¶ 2.c; and he paid the \$151 debt alleged in SOR ¶ 1.d. He provided no supporting documentation, and all three debts are listed on the most recent credit report in evidence. (Items 2-6)

Applicant asserted that he paid one of the three medical debts, and was unable to verify the creditors for the remaining two debts. The three medical debts were listed on the August 2019 combined credit report, but not the March 2020 Equifax credit report. (Items 2, 5, 6)

Applicant stated that he only recently started concerning himself with his credit. He submitted his SF 86 in August 2019; he was interviewed in September 2019; he received and answered the SOR in late 2020 or early 2021; and he received the FORM, which advised him of the importance of documentation, in February 2021. He did not respond to the FORM, so it is unknown if he followed up on any of his stated intentions. (Items 2-4)

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 security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including delinquent debts and defaulted student loans. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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 medical debts were minor and do not appear on the most recent credit report. Those debts are mitigated. He has known about the remaining debts for some period. He made assertions about paying some debts, but he did not provide documentation. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). He stated he planned to pay other debts, including his student loans. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's non-medical delinquent debts are not mitigated.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge