



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03568
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2021

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 4, 2021 (the document was erroneously dated January 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 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).

On January 21, 2021, 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 March 24, 2021. The evidence included in the FORM is identified as Items 4-7 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 20, 2021. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a document titled "Objections to Case No. 20-03568" (Applicant exhibit (AE) A-B). His objections refer to the incorrect date on the SOR, his belief that an employment reference was misleading, and his explanation concerning the status of "new delinquencies" referenced in the FORM, but not listed in the SOR. Those objections are overruled.

Concerning the three new debts not alleged in the SOR, but referred to in the FORM, I will not consider them for disqualification purposes, but may consider them during my analysis of the applicability of any mitigating conditions and the whole-person factors. Applicant also responded to the FORM (AE C) and submitted two supporting documents (AE D-E). All exhibits are admitted into evidence without objections. The June 2, 2021 transmittal letter from the Government is marked as an administrative exhibit (AD I). The case was assigned to me on July 9, 2021.

Findings of Fact

Applicant admitted six of the SOR allegations (SOR ¶¶ 1.b-1.g), and denied one allegation (SOR ¶ 1.a). 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 25 years old. He has worked for a federal contractor since March 2019. He had a period of unemployment from February 2018 to March 2018. He served on active duty in the U.S. Air Force from 2014 to 2017, and was honorably discharged. He received his high school diploma in 2013 and he has since taken some college courses. He married in 2014 and has two children. (Item 4; AE B)

The seven delinquent SOR debts total approximately \$36,000. The debts are comprised of collection accounts and charged-off accounts (auto repossession, credit card, consumer debt, and medical debts). The debts are established by credit reports from March 2021 and February 2020, and his SOR admissions. (Items 3, 6-7)

Applicant attributes his financial problems to being furloughed from his job in October 2019. While he secured another job in January 2020, he was unable to pay his bills, because his wife lost her job in April 2020 due to the COVID-19 pandemic. (Item 3; AE C)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$25,484 charge off. This is an auto account opened in June 2018. In his SOR answer, Applicant denied this debt claiming that he recently made a payment and that the debt should be current. If it was not, he promised to make arrangements to satisfy the debt. He did not provide any documentation showing that he made a payment,

that the debt is now current, or that he contacted the creditor about making payment arrangements. His March 2021 credit report still shows the debt as a charged-off account. This debt is unresolved. (Items 3, 7)

SOR ¶ 1.b-\$6,696 charge off. This is an account with a financial institution opened in April 2017, which went delinquent in August 2017. Applicant admitted this account and stated that he planned to have this account settled by the end of the year. He did not provide any documentation showing what efforts he has made to settle this debt. This debt is unresolved. (Items 3, 7)

SOR ¶ 1.c-\$652 charge off. This is an account with a financial institution opened in August 2014, which went delinquent in 2017. Applicant stated that he planned to resolve this debt in the next three to five months. He did not provide any documentation showing what efforts he has made to settle this debt. This debt is unresolved. (Items 3, 7; AE C)

SOR ¶ 1.d-\$59 charge off. Applicant admitted this debt and provided documentation showing that he paid the debt in March 2021. This debt is resolved. (Item 3, AE C-D)

SOR ¶ 1.e-\$372 collection. This is a medical debt opened in April 2018, which went delinquent in June 2018. Applicant claimed he paid this debt, but has not received a receipt from the creditor. The debt does not appear on his March 2021 credit report. This debt is resolved. (Items 3, 7; AE C)

SOR ¶ 1.f-\$2,706 charge off. This is an account with a financial institution opened in June 2017, which went delinquent in December 2017. Applicant admitted this debt. He contacted the creditor and was told the debt had been cancelled and received a Form 1099-C from the creditor showing the debt was discharged for tax year 2018. This debt is resolved. (Items 3, 7; AE C, E)

SOR ¶ 1.g-\$65 charge off. This is an account with a financial institution opened in May 2017, which went delinquent in April 2019. Applicant admitted this debt. He claimed he contacted the creditor and was referred to a third-party collector. He attempted to make telephone contact with the collector, but has been unsuccessful so far. This debt is unresolved. (Items 3, 6; AE C)

Applicant stated that his current financial status is in good shape. He claimed to have approximately \$1,200 of disposable income at the end of each month after paying all his expenses. He claimed to have \$2,500 in savings. No documentation was supplied to support these assertions. A recent credit report listed three new delinquent debts. He also claimed his peers at work would describe him as “a trustworthy, responsible, hardworking family man.” He did not provide any documents from said peers. (AE C).

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 has approximately \$ 32,000 of delinquent debt. With the exception of recently paying two of the smaller debts (\$59 and \$362) and having one debt cancelled (\$2,706), the larger debts remain unaddressed by him. He stated that he intended to pay the larger debts, but offered no specific details on how he planned to do so. 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; and

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

Applicant has a history of financial difficulties. The SOR debts are recent and all but two small debts, and a larger debt that was cancelled, remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. The three new delinquent debts appearing on his March 2021 credit report emphasize this point. AG ¶ 20(a) does not apply. While Applicant dealt with financial conditions beyond his control (his job furlough and his wife's unemployment), I find he has not acted responsibly in trying to resolve his debts. His efforts to resolve two small SOR debts 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. AG ¶¶ 20(b), 20(c), and 20(d) do not apply, except to SOR ¶¶ 1.d-1.f.

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 military service, his job furlough, and his wife's unemployment. However, I have also considered his insufficient efforts to address his delinquent SOR debts, as well as the accumulation of three new delinquent debts. 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.c; 1.g:	Against Applicant
Subparagraphs 1.d - 1.f:	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