



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



In the matter of:)
)
) ISCR Case No. 19-02961
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: Lance Renfro, Esq. and Asya Hogue, Esq.

07/27/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On November 15, 2019, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 January 16, 2020, and requested a hearing before an administrative judge. The case was assigned to me on February 24, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2020, scheduling the hearing for April 7, 2020. The hearing was canceled due to the

COVID-19 pandemic. On May 14, 2021, a notice of hearing was issued scheduling the hearing via the Defense Collaboration Services (DCS) system. I convened the hearing as scheduled on June 23, 2021. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibits (AE) A through P. There were no objections and all exhibits were admitted into evidence. The record remained open until July 7, 2021, to allow additional documents to be submitted. None were and the record closed. DOHA received the hearing transcript on July 2, 2021.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He earned a bachelor's degree in 1989 and a master's degree in 2001. He married in 2011 and has two children ages eight and four years old. He has been employed by a federal contractor since September 2018. (Tr. 16-17; GE 1; AE J, K)

The SOR alleges that Applicant has four delinquent credit card debts totaling approximately \$49,447. He stopped paying the credit cards in 2014. Regarding the debt in SOR ¶ 1.b, he said he contacted the creditor in 2015, but has not done anything since then. He said he was expecting to receive an IRS Form 1099C, cancelation of debt, but to date had not. (Tr. 37-40; GE 1, 2, 3)

Applicant testified he reached out to the creditor in SOR ¶ 1.c in 2015, and then again in 2018 or 2019, but claimed he could not find the current creditor. Regarding the debt in SOR ¶ 1.d, he said that the debt was sold to a collection agency. He was offered a settlement, but had not paid anything on the debt. He provided a copy of a settlement offer from the collection company for this debt. He has not made payments to resolve these two debts. (Tr. 40-43; AE P)

Applicant admitted he owed the debt in SOR ¶1.a (\$21,059) and he defaulted on it in 2014. He provided a copy of a news article and an administrative proceeding consent order from 2015 against the creditor in SOR ¶ 1.a. The order was issued by the United States Consumer Protection Bureau for harmful practices by the creditor in violation of the Consumer Financial Protection Act. The order applied to the time period January 1, 2009, through June 30, 2014, for any pre-judgment collection litigation matters that were pending during the time period; collection litigation matters where a judgment was obtained; and any court judgment that the creditor had obtained against the consumer through collection litigation. Applicant testified that the creditor did not initiate a lawsuit against him. He said he validated the debt in 2019 by contacting the original creditor seeking a settlement agreement. He provided a document from December 2019 from the creditor confirming a settlement agreement offer, where if Applicant agreed to settle the debt the payments would be \$527 a month from December 2019 to November 2020, with the total amount to be paid of \$6,324. No payments were made. Applicant testified that

he was told he would be issued an IRS Form 1099C, cancellation of debt for this debt. He said he lost communication with the creditor. He believes his debt is included in the above consent order. Applicant may have a legal defense if it was deemed that his debt fell within the parameters of this order. His credit reports from April 2019 and February 2020 reflect the debt was charged off by the credit grantor and in collection. (Tr. 32-37, 73; GE 2, 3; AE F, N, O)

Applicant attributed his financial problems to extensive damage sustained to his house during a 2005 hurricane, which required major repairs. His homeowners insurance only paid a fraction of the amount and then it went bankrupt. He estimated the costs he incurred, not paid by insurance, was approximately \$20,000, or more. He said he had to use credit cards to pay for the repairs. In 2008, his house depreciated due to the housing market, and his mortgage payments increased because he had an interest-only loan. His homeowner association fees also increased. In 2012, he sold the house and paid the mortgage, but lost the amount he had put down as a deposit. (Tr. 18-24; AE A)

In 2012, Applicant's wife became pregnant with their first child. She had complications. She was working at the time in a job that required her to travel. She had to stop working due to the stress. After the birth of the child, she did not go back to work. Later their child had medical issues and they visited multiple doctors. Their child was diagnosed with autism and then later with another medical issue that required surgery. He had health insurance, but there were extra medical expenses that he paid that were not covered. He testified that his son's surgery was in 2015. His son's other medical issues were resolved around 2016 or 2017. The child attends a private school that meets his special needs. (Tr. 24-28, 60-62, 71-72; AE B, C, D, E)

Applicant's wife has been working part-time for about eight or nine months, earning about \$1,500 a month. Applicant earns about \$132,000 annually. He participated in credit counseling in January 2020 that was approximately an hour long. A debt repayment plan was not prepared. He does not have a written budget. He said he contacted a debt consolidation company in 2018, but the fees associated with its proposed plan were prohibitive, and he decided to address the problem on his own. He said his finances are stable, and he is financially responsible. He testified that more recently he has been trying to address his delinquent debts, but wants to be confident he is paying the correct creditor. He said he will wait for an IRS Form 1099C to be sent to him and then settle the matters with the IRS. He did not offer any substantive evidence of efforts he made to pay these creditors. He noted that if he initiated contact with a creditor, because of the age of the debt, it could restart the clock for the statute of limitations. (Tr. 24-25, 28, 45-60, 63-67; AE G, H)

Applicant purchased a new home in February 2021 for \$379,000. He put a down payment of \$15,000. He testified the down payment was from money he saved. He and his family traveled to Europe to visit family in 2009, 2010, 2012, 2013, and 2018. (Tr. 67-71, 74-76; GE 1)

Applicant provided a copy of his resume, an award citation, and his 2019 performance review noting that he “exceeded expectations.” He also provided character letters describing him as reliable, conscientious, stable, calm, hard-working, trustworthy, dedicated, admired, exceptional, dependable, loyal, patriotic, and a skilled employee. He is well-liked by his teammates and is considered a man of integrity. (AE I, J, K, M)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. 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(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has four credit card debts that have been delinquent since 2014 and are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

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

Applicant attributed his financial problems to a 2005 hurricane that caused extensive damage to his house. His insurance company paid little and then went bankrupt. He paid approximately \$20,000 or more to repair his home. This was beyond his control. He had an interest-only loan, and his payments began to increase. He sold his home in 2012. He did not make a profit. This financial decision was within his control. He chose the type of loan to obtain and when to sell the house. The loss of his wife's income because of medical issues due to her 2012 pregnancy was beyond his control. His child's out-of-pocket medical expenses were beyond his control. For the full application of AG ¶ 20(b) Applicant must show he acted responsibly under the circumstances. Applicant used his credit cards to help pay his expenses. He stopped paying them in 2014. He has been aware that his debts are a security concern since 2019. Although he has made gestures towards resolving his debts, he has not done anything substantively to make payments. He appears to be in a wait and see mode, but has not taken action. He is aware that these debts are all seven years old and likely will be removed from his credit report. They may be uncollectable due to the statute of limitation or other legal defenses, but his conduct shows he has disregarded and neglected paying legitimate debts he incurred. This does not show he acted responsibly. AG ¶ 20(b) does not apply.

Applicant's debts are recent and ongoing. He had financial counseling, but there is scant evidence that his financial problems and debts are being resolved. He has not made a good-faith payment to pay his overdue creditors. There is insufficient evidence to fully apply the mitigating conditions in AG ¶¶ 20(a), 20(c) or 20(d).

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. He began experiencing financial problems in 2005 and had other life events occur that impacted his finances. He used credit cards to pay his bills, but stopped paying them in 2014 and owes more than \$49,000 that remains unpaid. At this juncture, he has an unreliable financial track record, and he has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For 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.d:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge