



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



In the matter of:)
)
) ISCR Case No. 20-02954
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2021

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 December 31, 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 on January 13, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on April 20, 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 April 29, 2021. As of July 6, 2021, he had not responded. The case was assigned to me on August 3, 2021. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He is applying for a security clearance for the first time. The most recent information available indicates that he has never married, and he has no children. (Item 3)

The SOR alleges an unpaid \$4,088 judgment to a collection unit for a state (SOR ¶ 1.a); two charged-off auto loans for \$12,485 (SOR ¶ 1.b) and \$9,983 (SOR ¶ 1.g); a second mortgage loan that was \$4,618 past due, with a balance of \$36,584 (SOR ¶ 1.h); and seven miscellaneous delinquent debts totaling about \$21,700 (SOR ¶¶ 1.c-1.f and 1.i-1.k).

Applicant denied owing the \$12,485 charged-off auto loan (SOR ¶ 1.b). He admitted that he owed the remaining debts, except he indicated that the judgment had been resolved in December 2019. The alleged debts are listed on a November 2019 credit report, an August 2020 credit report, or both credit reports. (Items 2, 5, 6)

Court records indicate that the \$4,088 judgment to a collection unit for a state (SOR ¶ 1.a) was entered against Applicant in August 2016. The judgment was satisfied in November 2020. (Item 2, 4)

The \$12,485 charged-off auto loan (SOR ¶ 1.b) is a joint account. Applicant asserted that he cosigned the loan for an individual; the vehicle was "totaled"; and the individual agreed that she would handle the remaining balance. There is no evidence of payments on this account. (Items 2, 5, 6)

The November 2019 credit report listed that Applicant's primary mortgage loan was \$6,226 past due, with a balance of \$148,774. The terms of the primary mortgage loan are \$1,245 per month for 360 months. It reported that he was \$5,213 past due on his second mortgage loan, with a balance of \$36,865. The terms of the second mortgage loan are \$330 per month for 360 months. The August 2020 credit report listed his primary mortgage loan as current, with a balance of \$140,276. The second mortgage loan was \$4,618 past due, with a balance of \$36,584 (SOR ¶ 1.h). Applicant stated that he paid the late payments on his mortgage loan to avoid foreclosure. He stated that he is paying an extra \$30 plus per month to finish the mortgage early. (Items 2, 5, 6)

There is no evidence of payments toward the remaining SOR debts. Applicant attributed his financial problems to unemployment in 2013 and subsequent periods of underemployment and low-paying jobs. He reported consistent employment since January 2014 on his August 2019 Questionnaire for National Security Positions (SF-86). He stated that he is working to obtain information technology (IT) certifications that will enable him to earn a higher salary and pay his debts. There is no evidence of financial counseling. (Items 2, 3, 5, 6)

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 a judgment, charged-off auto loans, a past-due second mortgage loan, and other delinquent debts. 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 attributed his financial problems to unemployment in 2013 and subsequent periods of underemployment and low-paying jobs. Those events qualify as conditions that were largely beyond his control.

The \$4,088 judgment to a collection unit for a state was satisfied in November 2020. SOR ¶ 1.a is mitigated and concluded for Applicant. He brought his primary mortgage loan current and reduced the amount that was past due on his second mortgage loan from \$5,213 to \$4,618. That is sufficient effort to mitigate SOR ¶ 1.h.

There is no evidence of payments toward the remaining SOR debts. As a cosigner of the \$12,485 charged-off auto loan, he is liable for the debt, even if he expected the other cosigner to pay it. He stated that he is working to obtain IT certifications that will enable him to earn a higher salary and pay his debts. However, intentions to pay 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).

Applicant does not have a sufficient track record to enable me to trust that he will pay his debts. There is insufficient evidence for a determination that his 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. Applicant may reach a point where his finances are sufficiently in order to warrant a security clearance, but he has not established that he is there at this time. I find that financial considerations security concerns remain despite the presence of some mitigation.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.k:	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