



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



In the matter of:)
)
 -----) ISCR Case No. 19-03875
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/05/2021

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his problematic financial history. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 17, 2018. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 10, 2020, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on January 19, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA). On March 9, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6 (Items). Applicant was sent the FORM on March 26, 2021, and he received the FORM on April 12, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted without objection. The case was assigned to me on July 6, 2021.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old, never married, and has no children. He attended a vocational school in 2011 and received a commercial driver's license. Since June 2018, Applicant has lived with a cohabitant in the state where he was born. He has two adult sisters, who also live in that state. Since September 2018, Applicant has been employed by a defense contractor. (Item 3.)

The SOR alleges that Applicant has 11 delinquent debts totaling over \$21,000, three of which are medical debts (\$232). (Item 1.) Applicant admitted those debts. He explained as follows: "[He had] several different major surgeries ... [and was] not able to work due to recovery and rehab time." Applicant further explained that: "[He had a] heart attack while at work [that required] major open heart surgery with multiple bypasses being performed which [he is] now recovering from and attending physical cardiac rehabilitation until March-April of 2021." (Item 2.) The Government does not contest or rebut those answers. (FORM.) Applicant's SOR delinquencies began in 2016 and 2017, and they persist to this day. (Items 4 and 5.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 access to classified information 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. 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 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.

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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

The SOR debts are established by the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's SOR indebtedness runs from 2016, and it continues to this day. Applicant's indebtedness was neither infrequent nor long ago. AG ¶ 20(a) does not apply. There is nothing in the record showing that Applicant has initiated and is making efforts to resolve his overdue debts. AG ¶ 20(d) does not apply.

It is undisputed that Applicant's indebtedness was caused by serious health conditions beyond his control. The first prong of AG ¶ 20(b) applies. The next inquiry, however, is whether Applicant acted responsibly under the adverse circumstances he was facing. There is nothing in the record showing that Applicant made any efforts to address his overdue debts. He apparently did not contact or otherwise reach out to his overdue creditors to advise them of the causes of his delinquent debts. I cannot find that the second prong of AG ¶ 20(b) applies. Therefore, I find against Applicant on SOR ¶¶ 1.a. through 1.h.

The magnitude of Applicant's \$232 of medical debt does not, in itself, raise security concerns. I find in favor of Applicant on SOR ¶¶ 1.i. through 1.k.

Under AG ¶ 2(a), 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 also considered the whole-person concept.

Applicant leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not 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
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Subparagraphs 1.a.-1.h:	Against Applicant
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Subparagraphs 1.i.-k:	For Applicant
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Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge