



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



In the matter of:)
)
) ISCR Case No. 20-00071
)
Applicant for Security Clearance)

Appearances

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

08/05/2021

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 April 29, 2020, 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant's answer to the SOR was undated, but it was verified that it was received by the DOD CAF on May 28, 2020. In his SOR answer, he failed to select a forum and was contacted by government personnel and elected to have his case decided on the written record in lieu of a hearing. In November 2020, Applicant provided a supplemental

letter and email to Department Counsel that was attached to his SOR answer and included in the record. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on March 21, 2021. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7. (Item 1 is the SOR) Applicant did not provide a response to the FORM or object to the Government's evidence. All Items are admitted into evidence. The case was assigned to me on May 17, 2021.

Findings of Fact

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

Applicant is 50 years old. He married in 2005. He and his wife have a 15-year-old child. He served in the military from 1991 to 2015, when he retired. He has been employed by the same federal contractor since 2015.

Applicant completed a security clearance application (SCA) in September 2018. He disclosed 11 delinquent debts. He noted that his debts were due to "income loss due to job change," referring to retiring from active duty and his income decreasing. His mortgage loan for rental property had been delinquent due to the tenants not paying their rent. He disclosed the mortgage was satisfied in December 2016 with the sale of the home after the renters were evicted. He fell behind on bills and prioritized paying some over others. Two debts to a military retail store were repaid through garnishment of his military retirement pay from 2015 to 2018. Other debts he noted he was "working to pay off debt once funds are available" and two he had paid through settlement. Applicant's admissions and credit reports from October 2018, December 2019, and November 2020 corroborate the debts alleged in the SOR. (Item 2, 3, 4, 5, 6, 7)

The SOR alleges 17 delinquent debts that total approximately \$82,224. Applicant attributed his financial problems to his inability to sell his house after he retired from the military and rented it until the tenants stopped paying rent. This, combined with his reduction in income after leaving active duty, led to the financial delinquencies in the SOR. Following the eviction of the tenants and sale of the property, Applicant took a methodical approach toward resolving his outstanding debts. (Item 2)

In Applicant's November 2020 email and letter, he explained that he had made great progress toward resolving his delinquent debts, while still meeting his current obligations. He estimated having his debts resolved in the next six to eight months. He explained he has always paid his bills on time since he was a teenager. He streamlined his budget, reduced his expenses, contacted his creditors to negotiate payment plans he could afford, and worked a second job. He anticipated being debt-free within the next year. He noted he had paid many debts and had eight remaining of which four were on payment plans, and would be fully paid in the next three months. The four remaining debts he was continuing to negotiate with the creditors, but he likely could only pay one at a

time so he could stay within his budget. He anticipated having all of these debts repaid in full by July 2021. After receiving the FORM in March 2021, Applicant did not provide any updated documents to those he provided in May 2020 with his answer to the SOR to show he had continued to abide by his payment plans and resolved the remaining debts as noted below or that he had negotiated settlements for the remaining debts. (Item 2)

In December 2019, Applicant received an IRS Form 1099C, cancellation of debt for the account in SOR ¶ 1.a (\$5,612). (Item 2-Exhibit A) This debt is resolved.

In his answer to the SOR, Applicant stated that he is in communication with the creditors and negotiating repayment plans for the debts in SOR ¶¶ 1.b (\$3,783), 1.c (\$3,631), 1.e (\$1,081), and 1.i (\$3,346). Applicant did not provide an update from his May 2020 answer or November 2020 letter to show the current status of these debts. These debts are unresolved. (Item 2)

The debt in SOR ¶ 1.d (\$1,634) is a collection account. Applicant stated he had a payment arrangement with the creditor to pay \$60 a month. He provided a document with his answer showing he made consistent monthly payments from July 2019 to April 2020. He did not provide an updated status of any payments made beyond then. He noted in his answer that he had a balance remaining of \$1,274. The debt is not resolved. (Item 2-Exhibit D)

The debt in SOR ¶ 1.f (\$293) is a collection account. Applicant stated he had a payment arrangement with the creditor to pay \$11.27 a month. He provided a document with his answer from May 2020 showing he started the payment plan in December 2018. The document shows a balance owed of \$225 and the date future payments were due. Applicant did not provide additional evidence to show he has continued to make the monthly payments. The debt is unresolved. (Item 2-Exhibit F)

The debt in SOR ¶ 1.g (\$217) is a collection account. Applicant stated he had a payment plan with the creditor to pay \$8.36 a month. He provided a document with his answer from May 2020 showing he started the payment plan in December 2018. The document shows a balance owed of \$167.27 and the date future payments were due. Applicant did not provide additional evidence to show he has continued to make the monthly payments. The debt is unresolved. (Item 2-Exhibit G)

The debt in SOR ¶ 1.h (\$215) is a collection account. Applicant stated he had a payment plan with the creditor to pay \$8.28 a month. He provided a document with his answer from May 2020 showing he started the payment plan in December 2018. The document shows a balance owed of \$165.69 and the date future payments were due. Applicant did not provide additional evidence to show he has continued to make the monthly payments. The debt is unresolved. (Item 2-Exhibit H)

Applicant indicated in his SOR answer that the debts alleged in SOR ¶ 1.o (same as ¶ 1.f), ¶ 1.p (same as ¶ 1.g), ¶ 1.q, (same as ¶ 1.h) were duplicates. Applicant's credit

report from November 2020, December 2019, and October 2018 supports that these are duplicate debts. (Items 5, 6, 7)

Applicant provided documentation to show he has settled the collection accounts alleged in SOR ¶¶ 1.j (\$33,534); 1.k (\$14,005); 1.l (\$10,745); 1.m (\$1,697); and 1.n (\$1,446). (Item 2-Exhibits J, K, L, M, N).

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

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

Applicant had numerous delinquent debts that he was unable to pay. There is sufficient evidence to support the application of the above disqualifying condition.

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;

(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 a tenant that failed to pay rent and income reduction after retiring from active duty in 2015. One debt was canceled and he received an IRS Form 1099C. Other debts he settled, some he entered into repayment plans, and others remain unresolved. Applicant has made some progress towards resolving his delinquent debts. He failed to respond to the FORM, so the latest documented information on his progress is from May 2020. It is therefore unknown whether he continued to make consistent payments on his payment plans and whether he has paid or negotiated settlements with the remaining creditors.

Applicant's debts are recent and ongoing. AG ¶ 20(a) therefore does not apply. His tenants failing to pay their rent was beyond his control. His reduction in income after retirement should have been expected and was within his control. He has acted responsibly in paying some of his debts and establishing payment plans. His failure to provide current information about the status of his remaining debts leaves me with questions about his continued efforts. I find AG ¶ 20(b) has some application, but it does not fully mitigate the concerns raised.

There is no evidence of financial counseling. There is some evidence of a good-faith effort to resolve some of his debts through settlements. AG ¶ 20(d) applies to these debts. It does not apply to those debts he failed to provide recent information about the current status of payment plans and the remaining debts he had not yet paid. Applicant denied all of the debts in the SOR, but did not dispute their legitimacy. He did show that

three debts were duplicates and they are resolved in his favor. AG ¶ 20(e) does not apply to the remaining debts.

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 has made progress towards resolving his financial delinquencies. He had an opportunity to provide more recent information about the current status of his remaining debts, but did not. It is unknown whether he continued to make payments through payment agreements or if he addressed the remaining delinquent debts alleged. Applicant did not meet his burden to document that he has continued to address his debts responsibly. 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 raised 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
Subparagraph: 1.a:	For Applicant

Subparagraphs: 1.b-1.i:	Against Applicant
Subparagraphs: 1.j-1.q:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge