



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



In the matter of:)
)
) ISCR Case No. 19-02270
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2021

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 August 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 September 6, 2019, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via the Defense Collaboration Services (DCS) system for July 12, 2021. I

convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 9. There were no objections and the exhibits were admitted into evidence. Applicant testified and did not submit any exhibits. The record was held open until July 26, 2021, to allow Applicant to submit documents, which he did. They were marked as Applicant's Exhibits (AE) A and B and admitted without objection. DOHA received the hearing transcript on July 20, 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 45 years old. He earned bachelor's degrees in 2001 and 2003. He never married and has no children. Applicant was unemployed for four months from October 2007 to January 2008. Because of his unemployment, he filed Chapter 13 bankruptcy in 2009, and his debts were discharged in May 2014. He has been steadily employed since 2008 and has worked for his current employer since 2018. (Transcript (Tr.) 16-23, 38-41; GE 1, 3)

Applicant earned approximately \$45,000 in 2008 and his annual salary increased steadily to approximately \$80,000 in 2016. He moved to a new state in 2016 to take a better paying job. His salary increased to approximately \$88,000 and is now \$90,000. He obtained two loans and three credit cards to put a down payment on a house at his new location and for moving expenses. He repaid the loans. Applicant underestimated the costs associated with his new home. He realized he was overextended. (Tr. 19-20, 24, 32-33, 51-54)

From 2014 to 2016, Applicant lived in his family home that he and his sister inherited. There was an existing mortgage on the property of about \$40,000 to \$50,000. In 2016, Applicant refinanced the property and received about \$50,000 to \$60,000 in equity from the house. He spent \$16,000 to satisfy his sister's tax debt. He used most of the remaining money to remodel the house while he was living there. When he refinanced the house it was put in his name only. When he moved, he kept the house and used it on weekends. In about the middle of 2018, he began to rent the house. He rented to friends and the monthly rental fee did not cover the mortgage and other expenses associated with the house. He exhausted most of the money he had received from refinancing the house. Applicant stated he could barely afford his expenses. He then spent about \$5,000 on the house after the tenants moved because they did not maintain the house properly and to prepare it for sale. The house is now on the market for sale. (Tr. 30, 34-35, 41-51)

In 2017, Applicant was involved in four car accidents. He testified that they all were his fault. Two of the accidents involved rental vehicles. In the first accident, he totaled his car, and the insurance paid all but a \$1,000 deductible. He purchased a new car (approximately \$45,000). At the same time, he decided to purchase a second vehicle, a used 2013 Cadillac for approximately \$32,000, because he always wanted this model of

car. He then had another accident with his new car and was responsible for the deductible, which was higher because of his last accident. He kept the Cadillac until July 2018, and then surrendered it to the creditor when he no longer could make the payments. SOR ¶ 1.c (\$20,706) reflects the deficiency amount owed after the vehicle was sold. Applicant has not contacted the creditor or taken any action to resolve this debt. He stated that after he purchased the second vehicle his finances became out of control. (Tr. 24-26, 54-60, 62)

Applicant testified that in about January or February 2018, he enrolled his debts with a debt consolidation company (DCC) that advised him to stop paying his credit card bills, and it would negotiate settlements on his behalf. It could not include the debt in SOR ¶ 1.c because it did not qualify. He followed the advice and made payments to DCC. He was to pay DCC \$320 a month. He said he made payments of \$600 a month, but could not recall how many. He estimated it was less than a year, but more than six months. He did not provide documents to show his payments. He stopped making payments to DCC when his wages were garnished due to the judgment and garnishment for the debt in SOR ¶ 1.b. Applicant testified that he self-reported his financial problems to his employer. (Tr. 26-30, 62-69)

In October 2018, a judgment was entered against Applicant (SOR ¶ 1.b - \$9,946). Applicant's wages were garnished. The judgment was satisfied and released in June 2020. Applicant testified that the garnishment impacted his ability to pay his other debts. (Tr. 26, 36-38, 61-62; GE 6, AE A)

The debt in SOR ¶ 1.d (\$8,014) was a personal loan that was charged off and later settled by DCC for less than the full amount. Applicant could not recall the amount of the settlement. It is reflected on his credit report and is resolved. (Tr. 70-72; GE 7; AE B)

Applicant admitted he owes the debts in SOR ¶¶ 1.e (\$7,629), 1.g (\$1,132), 1.h (\$675), 1.i (\$547), and 1.j (past due - \$3,667). He indicated the debts were enrolled with DCC, but he has not made progress on resolving them. (Tr. 72-79)

The debt in SOR ¶ 1.f (\$1,671) is reflected in Applicant's April 2018 credit report as a charged-off account in collection. Applicant testified that the debt was past due and he paid it, and the account closed. He provided a July 2021 credit report that reflected such. The account is not listed on his January 2021 credit report. This debt is resolved. (Tr. 72-76; GE 7, GE 9; AE B).

Applicant testified that his finances were also impacted by the COVID-19 pandemic because his sister lost her job in March 2020, and he provided her \$1,000 a month until February 2021. Applicant has no money in savings. He is paying the mortgages on two homes, along with the expenses associated with them. He said that he has cut back on his lifestyle in an attempt to reduce his living expenses. He intends to address his debts in the short-term by saving and paying his creditors and in the long-term by selling his family home. (Tr. 20, 28-29, 34-36, 80-83)

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; and
- (c) a history of not meeting financial obligations.

Applicant had his debts discharged in bankruptcy in 2014. He has numerous delinquent debts that remain 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; and

(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 unexpected expenses associated with moving and purchasing a new house, for which he took out loans and used credit cards. His problems were exacerbated when he purchased a second vehicle, and when he did not receive sufficient rent to cover the mortgage on a house he inherited and rented to friends. Applicant's poor planning regarding moving and homeowner's expenses and the use of personal loans and credit cards to finance both were within his control. Maintaining two homes was within his control. Renting to friends for an amount that did not sufficiently cover his mortgage was within his control. Applicant also attributed his financial issues to helping his sister during the pandemic. This unprecedented event left many people unemployed and was not predictable. His benevolence toward his sister was due to something beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant was already in a dire financial situation before the pandemic. He acted responsibly at one point by enrolling his debts with DCC and was able to pay one. But then he stopped participating with DCC and failed to address his delinquent debts. His debts remain recent and ongoing. AG ¶ 20(a) does not apply. AG ¶ 20(b) has minimal application.

Applicant resolved two debts. SOR ¶ 1.b was resolved through garnishment after a judgment was entered. This does not constitute a good-faith effort to resolve the debt. He resolved the debt in SOR ¶ 1.f. AG ¶ 20(d) applies to this debt. There is insufficient evidence that Applicant participated in financial counseling and his debts are under control or being resolved. AG ¶ 20(c) does not apply.

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 became overextended when he purchased a second house where he moved and did not anticipate the extra costs associated with it. He used personal loans and credit cards to pay his expenses. He purchased a second car that he later could not afford, which exacerbated his financial situation. Applicant hopes in the long term to sell the house he inherited to resolve his delinquent debts. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	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