



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



In the matter of:)
)
) ISCR Case No. 20-03028
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

09/07/2021

Decision

BENSON, Pamela C., 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 May 29, 2018. The Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) on December 2, 2020, detailing security concerns under Guideline F, Financial Considerations. The DCSA CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on March 1, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA). On March 31, 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 April 8, 2021, and he received the FORM on April 20, 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 or submit any documentation. The SOR and the answer (Item 1) are the pleadings in the case. Items 2 through 6 are admitted without objection. The case was assigned to me on July 21, 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 57 years old. He is twice divorced and has one adult daughter, age 35. He served in the Army National Guard from 1982 to 1983. He received an honorable discharge and immediately enlisted in the U.S. Air Force. He served on active duty until he received an honorable discharge in July 1991. Since January 2018, Applicant has been employed by a defense contractor. His job title is field technician. He previously worked for another federal contractor from January 2009 to October 2017 as an avionics technician before resigning from his job due to "family and personal issues." He was unemployed from November 2017 until his current employment in January 2018. (Item 2, Item 3)

The SOR alleges under Guideline F that Applicant has nine delinquent debts totaling nearly \$45,000. Applicant admitted the debts alleged in SOR ¶¶ 1.a through 1.i. (Item 1)

Applicant disclosed several delinquent accounts on his May 2018 SCA. He also listed: "To (sic) complicated to state here and would like the opportunity to explain (financial issues) face to face." During Applicant's background interview in October 2018, he explained that his financial hardships started in 2012. His daughter was going through a divorce at the time and he started providing financial assistance to her and his grandchildren. This financial support was provided despite the harm he suffered by not being able to pay all of his own monthly expenses, causing his accounts to become delinquent. The investigator discussed several outstanding accounts listed on his July 2018 credit report, to include the delinquent vehicle loan for his truck, and his home mortgage which reflected a foreclosure had been initiated. Applicant agreed with all of the delinquent accounts and told the investigator that he was working to resolve his financial delinquencies. He was earning more money in his current job than he did working for his previous employer. (Item 2, Item 3, Item 4)

The Government's brief noted that Applicant had not provided any documentation with his response to the SOR. Department Counsel recommended that Applicant provide documentation in response to the FORM to show the efforts he had taken to resolve the

financial issues. Doing so would be “beneficial for mitigation and review by an administrative judge.” To date, Applicant has not provided any supporting documentation.

A May 2019 credit report showed that not one of the delinquent accounts alleged in the SOR had been resolved, settled, or was in the process of being paid. His mortgage delinquency had increased from \$24,194 to \$27,123 when compared to his July 2018 credit report, and a new delinquent account appeared on the 2019 credit report. In April 2020, another credit report was obtained. It also showed that not one single delinquent account alleged in the SOR had been resolved, settled, or was in the process of being paid. The smallest unpaid debt alleged in the amount of \$28 (SOR ¶ 1.i) remained unchanged and outstanding on all three credit reports obtained in 2018, 2019, and 2020. (Item 4, Item 5, Item 6)

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 indebtedness continues to this day. His financial problems have existed over an extended period of time despite the higher paying job he obtained in 2018 with his current employer. His daughter's 2012 divorce was a situation beyond his control, but providing financial assistance to the detriment of one's own finances does not show responsible or prudent action under the circumstances. There is insufficient evidence in the record to show that Applicant made any good-faith effort to address his overdue debts. There are no clear indications that his financial problems are being resolved, or his finances are under control. Future financial problems are likely to occur. None of the mitigating conditions apply. Applicant failed to mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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(a):

(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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant is 57 years old and has been employed by a federal contractor since January 2018. He did not provide any evidence of payments, payment plans, or other actions to resolve the debt alleged in the SOR. There is no track record of steady,

systematic payments over an extended period of time. His actions show a lack of financial responsibility and raise questions about his trustworthiness, reliability, and ability to protect classified information. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

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.i:	Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge