



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



In the matter of:)
)
) ISCR Case No. 19-03390
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On January 31, 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; 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 February 22, 2020, and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2021. On July 23, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via the Defense Collaboration Services (DCS) system. I convened

the hearing as scheduled on August 18, 2021. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through D. There were no objections and all exhibits were admitted into evidence. DOHA received the hearing transcript on August 26, 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 39 years old. He completed vocational school in 2003. He married in 2016 and has two children ages three and one. He has worked for the same employer, a federal contractor, since 2008. (Transcript (Tr.) 18-20)

The SOR alleges five charged-off credit card debts totaling approximately \$37,167. Applicant testified that he incurred the debts from about 2007 until 2015. In his July 2018 security clearance application (SCA), he disclosed that he filed Chapter 13 bankruptcy in 2015 and stopped paying these accounts. He stated, "I was in the middle of paying for a wedding and fell behind on mortgage payments. I filed Chapter 13, but then decided to pull a 401k loan and pay my outstanding debt to lenders." (GE 1) The bankruptcy was dismissed in September 2016 at his request. (Tr. 21-27; GE 5)

In June 2016, Applicant took a loan for approximately \$49,000 from his pension plan to be repaid over five years. He completed the repayment agreement in June 2021. (Tr. 53; AE A, B)

In November 2018, Applicant was interviewed by a government investigator. He told the investigator that he stopped making mortgage payments in 2015 because he was paying bills for his upcoming wedding, credit cards, and regular bills. Applicant used the credit cards alleged in the SOR to finance his wedding, vacation, and other things. The wedding cost approximately \$26,000. He used approximately \$28,000 of the loan to bring his mortgage current and another \$16,000 to pay other delinquent bills. He did not pay the debts in the SOR because the creditors did not contact him. (Tr. 21-27, 33-35, 38-45; GE 1, 2)

The SOR alleges three delinquent accounts to the same creditor in ¶¶ 1.a (\$11,578), 1.b (\$11,106), and 1.c (\$6,170). In his SCA, Applicant disclosed he had delinquent accounts with this creditor in the total amount of \$17,000 that were "charged off, suspended, or canceled for failing pay as agreed." In his SCA, he did not indicate how many accounts he had with this creditor. (GE1) He indicated the accounts were opened in January 2014 and the financial issues were resolved in January 2016. Regarding the description of the action he had taken, he stated "Accounts are closed." (GE 1) No other delinquent debts were disclosed. (GE 1, 2)

Applicant told the government investigator that he was timely repaying his pension loan and all of his delinquent accounts were paid with the loan. He had other delinquent accounts that he had stopped making payments on in 2015, and that he used the loan to repay them. Regarding the three accounts alleged in SOR ¶¶ 1.a, 1.b and 1.c, he told the investigator that these accounts were in collection, and he had not received attempts from the creditor to resolve them. He was aware the accounts were charged off and he did not plan on making any payment arrangements unless he received collection attempts from the creditor. (Tr. 38-45; GE 2)

In Applicant's answer to the SOR, he admitted each debt and stated that he was waiting for the creditors to offer him settlements. He testified that he fully intended to pay his creditors, but was waiting for them to contact him. He took no action to pay or resolve these debts in the previous five years. He said that he has about \$6,500 remaining from his pension loan that he could use to settle the debts if the creditors contact him. Subsequent to his answer, the creditor for the debts in SOR ¶¶ 1.a, 1.b and 1.c contacted him and offered to settle the balance owed on all three debts (\$28,856) for \$8,652. Applicant paid the settlement in March 2020. (Tr. 20-27, 30-41; AE C, D)

Applicant testified that he has not contacted the creditors for the debts in SOR ¶¶ 1.d (\$4,533) and 1.e (\$3,780). Both debts became delinquent in 2015 and are charged off. They are listed on his July 2019 and August 2021 credit reports. He testified that he wanted to pay these creditors, and he may even call them after his hearing to settle. He said he has a budget, but it is not written, and his brother is helping him with his finances. He had financial counseling when he filed for bankruptcy in 2016. (Tr. 34-36, 45-48, 54)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when applying the mitigating conditions, in a credibility determination, and a whole-person analysis.

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;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had five accounts that became delinquent in 2015. He admitted that he owed the accounts and despite having the money to pay these debts, he chose not to unless the creditors contacted him. 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;
- (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's financial problems began when he stopped making mortgage payments so he could finance his wedding, vacation, and other things. He took a loan from his pension plan to bring his mortgage current and pay other debts not alleged in the SOR. He chose not to pay the remaining debts unless the creditors contacted him. These debts became delinquent in 2015. Applicant consciously reneged on his financial obligations. His behavior casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant's financial problems resulted from his decision to finance his wedding and other expenses with credit cards, and then deciding he would not pay them unless the creditors contacted him. This was within his control. AG ¶ 20(b) does not apply. There is some evidence that Applicant received financial counseling in 2016, but the evidence is insufficient to conclude his financial problems are being resolved. AG ¶ 20(c) does not apply.

Applicant did not contact any of the creditors to resolve his delinquent debts. He had the money to pay the debts, but stated he was waiting for them to contact him. After five years, one creditor offered him a settlement on three debts, which Applicant paid. He has not contacted the creditors on the two remaining debts. His actions do not constitute a good-faith effort to repay his overdue creditors. AG ¶ 20(d) 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 has been aware for many years that he had delinquent accounts that he used to finance his wedding, vacation, and other expenses. He made the conscious decision to not pay these debts unless the creditors contacted him. The government relies on those holding security clearances to do the right thing and act responsibly. Applicant's lack of judgment and unwillingness to abide by fundamental rules raise security concerns. 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
Subparagraphs 1.a-1.c:	For Applicant
Subparagraphs 1.d-1.e:	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