



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



In the matter of:)
)
) ISCR Case No. 19-02960
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

07/08/2021

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 November 21, 2019, 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 December 31, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 24, 2020. A hearing had been scheduled in April 2020, but due to the COVID-19 pandemic shutdown it was delayed. The Defense Office of Hearings and Appeals (DOHA) issued a notice of

hearing on May 17, 2021. I convened the hearing by the Defense Collaboration Service system on June 10, 2021, as scheduled. The Government offered exhibits (GE) 1 through 6. Applicant testified and offered Applicant Exhibits (AE) A through D. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on June 21, 2021.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶ 1.x. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He served in the military from 1980 to 2000 and retired in the paygrade E-7. He married in 1981 and divorced in 1997. There are no children from the marriage. He remarried in 2013 and has three stepchildren, a 15-year-old and 13-year-old twins. Applicant holds a bachelor's degree and is close to completing a master's degree. He has been continuously employed by a federal contractor since April 2013. (Tr. 15-18)

Applicant explained his financial difficulties began after he married in 2013. He said shortly after they married, he and his wife opened multiple credit accounts. He greatly underestimated the amount of expenses associated with three children. Two of the children have special needs. His wife does not receive child support for the twins because their father was in the United States illegally and his whereabouts are unknown. The eldest child also does not receive child support. Applicant's wife returned to school in 2012 to earn a degree in health care administration to get a better job. After they were married, she became permanently disabled and could not work. Due to the timing of her disability, she does not receive Social Security disability benefits. Applicant's salary is approximately \$112,000 and his military pension is approximately \$14,400. Applicant's wife's student loans (approximately \$77,000) were forgiven due to her disability. He admitted that his poor financial planning is responsible for his financial problems. (Tr. 18-21, 38-39, 41)

In approximately 2015, Applicant began falling behind on his accounts. He contacted a credit-counseling service in March 2015, but their proposed payment plan was more than he could afford. He contemplated filing bankruptcy, but wanted to pay his debts. He sold timeshare contracts he owned to increase his cash flow. In 2017, he relocated to a new state that did not have state income taxes, the weather was therapeutic for his wife, and there were more government benefits available for the children. (Tr. 21-22)

Applicant admitted that he has 25 delinquent debts that are alleged in the SOR. He disputed the debt alleged in SOR ¶ 1.x (\$175) and testified it was removed from his credit report. He also testified that the past-due student loans alleged in SOR ¶¶ 1.l and 1.m (total balance: \$88,095 and \$18,467 respectively) have been refinanced and are in a deferred status. He testified he stopped attending school in 2014, and he has not made

any payments toward these debts in the last seven years. He testified he plans on repaying his student loans by using an income-based repayment plan, after he pays his delinquent debts. The total amount of the delinquent debt he owes is approximately \$31,892, excluding the three above accounts. (Tr. 34-38)

Applicant provided exhibits to document that he began making payments of \$150 a month in April 2019 on the delinquent debts alleged in SOR ¶¶ 1.c (\$2,866) and 1.h (\$824) to the same creditor. The payments were made through an automatic withdrawal. He said that he decided to pay first the creditor that had the largest balance and then he will work his way through the remainder of his delinquent debts. He said for some reason after approximately nine months the payments stopped. He had to restart the payments. The debt was for a military credit account, so his tax refund was applied to the debt. The payments will continue until January 2022. Applicant believed the current balance is around \$1,500. (Tr. 22-23, 29-33; AE B)

Applicant provided documentary evidence that the judgment alleged in SOR ¶ 1.aa (\$832) was paid through a payment agreement that was completed in April 2019. (Tr. 26-27; AE D)

Applicant provided documents to show he is making payments on a settlement agreement reached in response to a lawsuit filed by a creditor. He indicated the case went to mediation and the amount the creditor alleged was reduced. This debt is not alleged in the SOR (amount of debt to be paid is \$1,777 plus court costs of \$243) and will not be considered for disqualifying purposes, but may be considered in the whole person analysis and in mitigation. The last payment due is September 2021. (Tr. 23-26; AE C)

Applicant testified that his wife has some “low-level” credit cards in her own name that are being paid timely. (Tr. 40) They own two vehicles (2019 and 2020). At the end of the month he estimated he has a couple hundred dollars remaining. He has no savings or investments.

In Applicant’s answer to the SOR, he indicated that he was making payments on the debt in SOR ¶ 1.b. When questioned about its current status, he stated at the time he completed his answer to the SOR he was making payments. He is not currently making payments and does not know the account’s status. He estimated that his out-of-pocket medical expenses are approximately \$4,000 annually. Applicant also stated that he reached out via email to another counseling service in early 2020 about establishing payment plans for his debts, but due to the pandemic shutdown he did not follow up on it. He does not have a budget. He indicated his wife was not receptive to cutting expenses. He testified that he intends to pay his debts. Other than the accounts noted above, Applicant has not had any contact with the creditors of the remaining delinquent debts, and he is not making any payments towards these debts. (Tr. 33-34, 41-53)

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 has numerous delinquent debts that began accumulating in 2015 and remain unpaid. 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;

(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 poor financial planning after getting married in 2013 and assuming financial responsibility for three children. He and his wife also acquired multiple credit accounts. These conditions were within his control. His wife's inability to work impacted their finances. This condition was beyond his control. For the application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant resolved the judgment alleged in SOR ¶ 1.aa through a payment arrangement. He is also making payments as part of a settlement from a creditor who had filed a lawsuit. Paying debts after or in anticipation of a lawsuit is not responsible action. Although he is paying one large debt, considering the totality of the evidence, I cannot find he has acted responsibly or his actions can be considered a good-faith effort to repay overdue creditors. AG ¶ 20(b) partially applies. AG ¶ 20(d) does not apply to these debts. It does apply to the debts in SOR ¶¶ 1.c and 1.h.

Applicant contacted two credit-counseling services. With the first one he decided the payment plan was unaffordable. Regarding the second, he failed to follow up with them during the pandemic. There is insufficient evidence that he is receiving financial counseling and that there are clear indications his financial problems are under control. AG ¶ 20(c) has minimal application. Applicant disputed the debt in SOR ¶ 1.x. I find AG ¶ 20(e) applies to this debt, and it is resolved.

Applicant does not have a budget or a realistic plan for resolving his delinquent debts. He testified that his wife is reluctant to cut their expenses. I am unable to find it is unlikely financial issues will recur. His behavior casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) 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 is 59 years old. I have considered his honorable military service. Although Applicant testified that he did not want to file bankruptcy and wants to repay his creditors, he does not have a realistic plan to accomplish it. He has little expendable income and an unreliable financial track record. 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraphs 1.n-1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y-1.z:	Against Applicant
Subparagraph 1.aa:	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