



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



In the matter of:)
)
) ISCR Case No. 19-03835
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2021

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 14, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted 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 on June 8, 2017.

Applicant answered the SOR on March 20, 2020, and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 27, 2021, and the hearing was convened as scheduled on

August 26, 2021, using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified and offered exhibits (AE) A-P, which were admitted into evidence without objection. The record remained open after the hearing, and Applicant timely submitted AE Q-S, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 8, 2021.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 31-year-old employee of a federal contractor performing the duties of a systems engineer. He began working at his present job in December 2018. He received his bachelor's degree in 2017. He is single with no children. He lives with his girlfriend to whom he pays monthly rent of \$500. (Tr. 6-7, 17-18, 28; GE 1)

The SOR alleged 11 delinquent accounts (a federal recoupment debt and medical debts) totaling approximately \$27,900. The debts are established by credit reports from April 2019, November 2019, and February 2021; admissions in his March 2019 security clearance application (SCA); Applicant's personal subject interview (PSI) with a defense investigator in August 2019; and his SOR admissions. (SOR ¶¶ 1.a – 1.k) (GE 1-5; Answer to SOR)

Applicant's financial difficulties began in approximately 2011 when he dis-enrolled from a university where he had accepted an ROTC scholarship. He attended for approximately two years, long enough to garner a recoupment obligation for his scholarship money, when he quit because the program was not right for him. Upon quitting, he incurred a financial obligation to the federal government of approximately \$24,000. Applicant claims he made some payments on the debt early on, but because of low paying jobs and continuing his college education on his own, he could not keep up with the payments and they became delinquent. (Tr. 20-21; GE 1-2)

Applicant dealt with two medical issues involving a collapsed lung, first in 2017 and again in 2018. He was not covered by health insurance for these incidents, and he and his mother tried to handle the resulting medical bills. Some of the SOR-related medical debts are derived from these events. (Tr. 35-36, 38; GE 2)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$15,338. This debt resulted from Applicant's recoupment obligation to the federal government for his ROTC scholarship. In his SCA, Applicant claims the balance on this debt started at approximately \$24,000, but his earliest credit report puts the initial balance at approximately \$20,000 in 2014. Regardless, it appears Applicant made some payments before the debt was charged off in the amount of approximately

\$15,000 in 2019. Applicant had his 2019 federal tax return refund in the amount of \$2,034 involuntarily applied to this debt, as well as his 2020 federal tax refund in the amount of \$2,107. Applicant documented one voluntary payment toward this debt on August 25, 2021, in the amount of \$300. He claims he will continue making payments in this amount until the debt is paid. He made a similar promise of prompt payments toward this debt in his SCA in March 2019, but failed to follow through. This debt is unresolved. (Tr. 20-21; GE 1-4; AE E-H, O, S)

SOR ¶ 1.b-\$6,540. Applicant incurred this medical debt in November 2011 and it was sold to a collection agency in January 2019. On August 25, 2021, Applicant documented establishing a payment plan beginning on September 25, 2021, with \$300 payments coming out of his bank account monthly (no plan payments had been made yet). He had not made any payments on the account previously. This debt is unresolved. (Tr. 23; GE 3; AE I, O)

SOR ¶ 1.c-\$3,083. Applicant incurred this medical debt in March 2018 and it was sold to a collection agency in May 2019. Applicant documented settling this debt on August 27, 2021, for \$2,620. He had not made any payments on the account previously. This debt is resolved. (Tr. 23; GE 4; AE J, O, Q)

SOR ¶¶ 1.d, 1.f, 1.g, 1.i, 1.j-\$1,657 (total). Applicant incurred these medical debts in September 2017 and they were sold to a collection agency in November 2017. Applicant documented paying these debts on August 20, 2021, for \$1,644. He had not made any payments on the account previously. These debts are resolved. (Tr. 24-26; GE 4; AE K, L, O)

SOR ¶ 1.e-\$600. Applicant incurred this medical debt in March 2018 and it was sold to a collection agency in July 2018. Applicant documented paying this debt in full on February 24, 2020. He had not made any payments on the account previously. This debt is resolved. (Tr. 24; GE 4; AE M, O)

SOR ¶ 1.h-\$124. Applicant incurred this medical debt in March 2018 and it was sold to a collection agency in May 2019. Applicant documented settling this debt on August 27, 2021, for \$2,620. He had not made any payments on the account previously. This debt is resolved. (Tr. 25-26; GE 4; AE J, O, Q)

SOR ¶ 1.k-\$634. Applicant incurred this medical debt in March 2018 and it was sold to a collection agency in July 2018. On August 25, 2021, Applicant documented paying this debt on in full. He had not made any payments on the account previously. This debt is resolved. (Tr. 26; GE 3; AE O, S)

Applicant provided a job appraisal that stated he was a significant contributor to his organization. He also provided documentation showing that he received a \$6,210 raise in April 2021. He provided a list of monthly expenses and claimed that he currently has a monthly remainder of approximately \$1,500 after paying all his required expenses. He also has both private and federal insured student loans. He is current on his private

loans and his federal student loans in the amount of \$40,000 are in deferment until approximately January 2022. (Tr. 39-42, 45, 47, 49; AE A-C, P)

Policies

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

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 to obtain 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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

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

Applicant incurred delinquent debts due to having to pay back his ROTC scholarship and multiple medical bills. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 debts are recent because they are ongoing and, although he recently made several payments toward his medical debts, with one exception, he only did so shortly before his security clearance hearing. He has only made one voluntary payment of \$300 recently toward his educational recoupment debt. Two of his latest federal tax refunds were captured and applied toward that debt. He failed to produce evidence showing that recurrence of his financial problems is unlikely, in light of his soon to be responsibility to begin paying his \$40,000 federal student loans. AG ¶ 20(a) is not applicable.

While Applicant's medical issues resulting in those debts were circumstances beyond his control, his quitting his college ROTC program, which resulted in him being financially responsible for paying back his scholarship, was not beyond his control. Additionally, he did not act responsibly concerning the medical debts when he failed to attempt to resolve them until the eve of his hearing. AG ¶ 20(b) is not fully applicable.

Applicant did not present evidence of financial counseling. His track record to date does not support a good financial picture. Additionally, he failed to put forth a good-faith effort to resolve his debts. With the exception of one documented \$300 payment in August 2021, Applicant's other recoupment debt payments to the government occurred when his federal tax refunds were captured for tax years 2019 and 2020. This does not constitute acting in good faith. All but one payment towards his medical debts did not occur until a few days before his hearing. His actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies to the medical debts that he has paid or settled.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's medical issues, his job performance and his recent debt payments. However, I also considered that he waited until the eve of his hearing to take any significant action to address his debts. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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-1b:	Against Applicant
Subparagraphs: 1.c-1.k:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge