



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00188
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

11/23/2021

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 April 8, 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 May 13, 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 15, 2021, and the hearing was convened as scheduled on August 12,

2021, using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as hearing exhibits (HE I, II). Applicant testified and offered exhibits (AE) A-D, which were admitted without objection. Applicant's email describing his exhibits is marked as HE III. DOHA received the hearing transcript (Tr.) on August 20, 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 38-year-old employee of a federal contractor performing the duties of a safety quality assurance specialist. He began working at his present job in October 2017. He has a high school diploma. He is married. He has two children, ages 13 and 3, and an adult stepson. (Tr. 6, 22, 31; GE 1, 2)

Applicant served in the U.S. Marine Corps for approximately 12 years, enlisting in August 2001 and being medically retired in 2013. He deployed to Iraq as an explosive ordinance disposal (EOD) technician. He suffered combat injuries when a device he was working on exploded. He suffered loss of sight in one eye and various muscular injuries. He was medically retired as a result of these injuries. He receives a military pension in the amount of approximately \$1,000 per month. He also receives a Department of Veterans Affairs (VA) disability rating and a monthly payment of approximately \$2,300. He also received social security disability payments of approximately \$2,000 per month from 2010 until 2014. His payments were stopped by the Social Security Administration when it made a determination that he was no longer disabled under its rules. Additionally, he received a lump-sum payment of \$100,000 for his injuries (he did not specify the source of this payment). He admitted "blowing" that amount fairly quickly. (Tr. 20-24, 34-35)

The SOR alleged 19 delinquent accounts (a car repossession, a rental debt, medical debts, and consumer debts) totaling approximately \$30,602. The debts are established by credit reports from January 2018, April 2019, and February 2021; a judgment related to the repossession debt; Applicant's personal subject interview (PSI) with a defense investigator in July 2018; and his SOR admissions. (SOR ¶¶ 1.a – 1.s) (AE 2-6; Answer to SOR)

Applicant explained that his financial difficulties were caused after his medical retirement when he and his family lived in a high-cost state from 2010 to 2014, relying on just his military pension, his social security payments, and his VA payments for their income. He and his family abandoned their apartment because of the high cost and moved to another state in 2014. In 2017, Applicant went back to work to supplement his income. Before moving he "foolishly" bought a truck that was eventually repossessed when he failed to make the payments (SOR ¶ 1.a). He also incurred a series of copayments because of his daughter's medical situation, which he failed to pay. On his

security clearance application (SCA), he listed a large period of unemployment from 2014 to 2017, but he was receiving income from his military pension, his VA disability compensation, and his social security disability payment during that timeframe. He has not received any financial counseling and does not use a monthly budget. At the end of the month, after paying all his bills and debts, he typically has a residual amount of \$250. He estimated that his 401K retirement plan has approximately \$7,000 in it. (Tr. 24-25, 27, 34, 49-50; GE A)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$18,813. This debt resulted from a car repossession. Applicant opened this loan in 2015. In November 2016 the car loan was charged off, then repossessed for non-payment, and a deficiency balance accrued to him of approximately \$15,000. The creditor obtained a default judgment against Applicant in May 2017 and a garnishment order in 2019. Applicant's pay was garnished in the amount of approximately \$970 per month until the judgment was satisfied in December 2020. (Tr. 27, 37; GE 3, 6; AE D)

SOR ¶ 1.b-\$3,445. Applicant incurred this debt in September 2014 when he abandoned an apartment before the end of the lease. This debt was assigned to a collector in December 2014. He has made no attempts to repay this debt This debt is unresolved. (Tr. 37; GE 3)

SOR ¶ 1.c-\$373. Applicant incurred this consumer debt in February 2016. This debt was assigned to a collector in May 2016. Applicant claimed he called the creditor to resolve the debt, but was told there was no record of the debt. He did not provide supporting documentation. This debt is unresolved. (Tr. 37; GE 3)

SOR ¶¶ 1.d-1.h, 1.o-1.s-\$441 (total). Applicant incurred these medical bills from his daughter's copayments for her treatments. He entered into an informal, unwritten, agreement with the collection service holding all these delinquent medical debts. He testified that he will pay the collector whenever he can and whittle the balance down. The collector shows a balance owed larger than the SOR amount (\$2,912). Applicant documented that he made one payment in August 2021 of approximately \$51. (Tr. 39, 44-45; GE 3; AEC)

SOR ¶ 1.i-\$3,811. Applicant incurred this debt when he purchased a time-share property in May 2010. He stopped making payments in November 2012 and the debt was charged off in December 2014. Applicant testified that he felt pressured into buying the property due to the predatory selling techniques of the property company. He claimed he tried to cancel the contract early on, but was told he could not do so. He did not provide supporting documentation for his claims. He does not know the current status of the debt This debt is unresolved. (Tr. 40-41, 39; GE 3)

SOR ¶ 1.j-\$1,014. Applicant opened this telecommunications account in 2013 and it became delinquent in 2016. The debt was sold to a collection service in 2018. He claimed he contacted the collection company in August 2021, but was told it had no record

of him. He did not contact the original creditor. This debt is unresolved. (Tr. 41-42; GE 3, 5)

SOR ¶ 1.k-no amount stated. Applicant testified that he did not know the status of this debt. His January 2018 credit report shows a zero balance and zero amount past due. The debt does not appear on any later credit reports. This debt is resolved. (Tr. 42; GE 3-5)

SOR ¶ 1.l-\$1,418. Applicant's last activity on this telecommunications account was in 2013. The debt was sold to a collection service in 2016. He has not taken any further action to pay or otherwise resolve this debt. This debt is unresolved. (Tr. 43; GE 3)

SOR ¶ 1.m-\$865. Applicant's last activity on this telecommunications account was in 2012. The debt was sold to a collection service in 2014. He has not taken any further action to pay or otherwise resolve this debt. This debt is unresolved. (Tr. 43-44; GE 3)

SOR ¶ 1.n-\$422. Applicant's last activity on this telecommunications account was in 2014. The debt was sold to a collection service in 2016. He has not taken any further action to pay or otherwise resolve this debt. This debt is unresolved. (Tr. 44; GE 3)

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 multiple delinquent debts of which all but two remain unpaid or unresolved. I find both disqualifying conditions are raised, except as to SOR ¶ 1.k, which was not established.

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 one payment toward his medical debts after the SOR was issued, he has chosen not to address his other debts. He resolved his large car repossession debt, but only through a court-ordered wage garnishment action. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant experienced financial difficulties by residing in a high cost area and because he was unemployed for several years following his medical retirement from the military due to combat injuries he suffered. Although, it must be pointed out that while he was unemployed, he was receiving approximately \$5,000 per month in income from various disability payments. He also received a lump-sum payment of \$100,000, which he admitted that he spent unwisely. These were circumstances beyond his control. However, he did not act responsibly when he failed to attempt to resolve his debts with the resources he had available to him. 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. His payment of the repossessed car through court-ordered wage garnishment does not constitute acting in good faith. He has only made one payment toward his medical debts and that was in August 2021. Unfortunately, his actions are too little, too late. Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do 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 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 the tremendous sacrifice Applicant made through his military service and his current disabled status. However, I also considered that he has made insufficient efforts to resolve his debts even though he had sufficient resources to do so. 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, particularly because he admitted making poor financial decisions.

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-1.j, 1.l-1.s:	Against Applicant
Subparagraph: 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