



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01123
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On July 10, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant submitted an undated response to the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2021.

The hearing was convened as scheduled on August 30, 2021. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He responded with an email and attached documents that I have marked Applicant's Exhibits (AE) A, B, and C, and admitted without objection.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since December 2018. He has an associate's degree, which he earned in 2015. He married in 2015 and divorced in 2018. He has one child who lives with his ex-wife. Applicant lives with his girlfriend and his girlfriend's child. (Transcript (Tr.) at 12-13, 16, 18, 26; GE 1)

Applicant has financial problems, which he attributed to unemployment, underemployment, and his girlfriend being out of work because of the COVID pandemic. Applicant's work history includes several terminations, which he described as primarily for events that were not his fault. The father of his girlfriend's child is significantly in arrears on his child support obligations. Applicant also stated that he worked for his uncle remodeling a house. His uncle accepted \$5,000 for the job and did not complete the work. The owner threatened legal action. Applicant paid some of the money back, even though it was not his debt. (Tr. at 12-13, 16, 19-25, 32; Applicant's response to SOR; GE 1)

SOR ¶ 1.a alleges a \$24,141 charged-off auto loan. Applicant admitted owing the debt, but not the amount. In his response to the SOR, he stated that the correct amount was \$16,167. The two most recent credit reports list the balance of the debt as \$16,167. Applicant testified that he spoke with the creditor who told him the balance was \$13,159. He asserted that he contacted the creditor about settling the debt, but their settlement offer was well beyond his ability to pay. (Tr. at 11-12, 15, 26; Applicant's response to SOR; GE 2-4)

The collection company for the \$1,270 charged-off debt alleged in SOR ¶ 1.b sued Applicant. On August 31, 2021, the collection company offered a stipulated judgment. Applicant accepted the offer; and agreed that he owed \$1,270 in principal, plus court costs of \$263, minus payments of \$75, for a total of \$1,458. Applicant agreed to pay \$75 by September 17, 2021, followed by monthly payments of \$75. Applicant asserted, without additional documentation, that he made three payments under the agreement. (Tr. at 13-15, 29; Applicant's response to SOR; GE 2-4; AE A-C)

Applicant denied owing the \$332 charged-off department store credit card debt (SOR ¶ 1.c). Applicant stated that he closed the account and paid the credit card, but about a year later the creditor contacted him about a balance on the account. The debt is listed on the 2019 credit report as opened in January 2013, with a date of last action of August 2013, and the comment: "Consumer disputes after resolution." The debt is not listed on the December 2020 and August 2021 credit reports, but both credit reports are beyond the seven-year reporting window. (Tr. at 29-30; Applicant's response to SOR; GE 2-4)

SOR ¶ 1.d alleges a \$182 delinquent debt to an insurance company. Applicant denied owing the debt. He stated his auto insurance was cancelled when his vehicle was repossessed. The debt is listed on the three credit reports in evidence. When he contacted the insurance company, he was told that the company would not settle the

debt because it was under \$200, but Applicant could make payments on the debt. Applicant testified that he could not afford a lump-sum payment of the debt, but he would pay about \$20 to \$40 per month toward the debt until it is paid. He did not submit any evidence of payments in his post-hearing submission. (Tr. at 15, 30-31; Applicant's response to SOR; GE 2-4)

Applicant asserted that his finances are in better shape, and he lives within his means. He monitors his credit. His girlfriend has a stable job. He stated that he intends to pay his debts. (Tr. at 16-17, 26-28, 31-32, 35-36)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, 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(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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

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.

Applicant’s has a history of financial problems, including several delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 unemployment; underemployment; his girlfriend being out of work because of the COVID pandemic; the father of his girlfriend's child failing to pay child support; and his uncle accepting funds for a home remodeling, but not completing the work, leaving Applicant to pay some of the money back to the homeowner. Applicant's work history includes several terminations, which he described as primarily for events that were not his fault. Applicant's financial problems were at least partially beyond his control.

Applicant has worked for his current employer since December 2018. At most, I can credit him with three \$75 payments, which occurred since August 2021, after he was sued and after the issuance of the SOR. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Applicant disputed owing the \$332 charged-off department store credit card debt (SOR ¶ 1.c), and it is not listed on the December 2020 and August 2021 credit reports, but both credit reports are beyond the seven-year reporting window. The comment on the 2019 credit report: "Consumer disputes after resolution" appears to indicate that Applicant was unsuccessful in disputing the debt before it aged off his credit report. I am crediting him with mitigating the debt because once a debt falls off a credit report, there is little an applicant can do to further dispute the debt.

Applicant asserted that his finances are in better shape; he lives within his means; and he intends to pay his debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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
Subparagraph 1.d:	Against Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge