



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



In the matter of:)
)
) ISCR Case No. 20-01358
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2022

Decision

RIVERA, Juan J., Administrative Judge:

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

Statement of the Case

On February 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on February 17, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 30, 2021, The hearing was convened as scheduled on October 13, 2021. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. GE 5, the Government’s Discovery Letter, dated May 27, 2021, was marked and made part of the record. Applicant testified, as indicated in the transcript received on October 20, 2021. Post-hearing, he submitted Applicant’s Exhibits (AE) A through F, which were admitted without objection.

Procedural Issue

The Government moved to strike the allegation in SOR ¶ 1.g, because it was a duplicate of the account alleged in SOR ¶ 1.c. Without objections, I granted the motion.

Findings of Fact

Applicant is 32 years old. He served in the Army between 2009 and 2014. He was honorably discharged in 2014 as an E-4 (specialist). He held a secret clearance while in the service. He testified that he is receiving a \$2,000 monthly disability pension, because of anxiety, depression, and tinnitus. (Tr. 64-65) He married in 2010 and divorced in 2011. He has a nine-year-old daughter for whom he provides court-ordered financial support (\$471 monthly) since 2012. (AE B) He married again in 2011, but separated in 2018. (Tr. 80-81) He also has a two-year-old daughter, two stepdaughters, and a non-biological child that he considers his responsibility. (Tr. 36)

After his discharge from the service, Applicant attended college for some time, but did not complete a degree. He worked as a process server between April 2015 and March 2017. He was unemployed between March 2017 and October 2017. He fell behind in his child-support payments while unemployed, but claimed he is presently current. He indicated that his child-support obligation is being paid by garnishment of his wages since 2012. Applicant has worked for defense contractors in different position since October 2018. He was hired by his current employer and security sponsor in May 2021. He seeks eligibility for a security clearance, which is required for him to maintain his employment.

The SOR alleges 11 delinquent debts, with balances totaling about \$40,000. Applicant admitted to owing the debts alleged in SOR ¶¶ 1.a (\$9,453); 1.b (\$8,662); and 1.d (\$6,195). He denied all of the remaining SOR allegations (SOR ¶¶ 1.c, 1.e through 1.i, except 1.g).

The status of the SOR allegations follows:

SOR ¶ 1.a (\$9,453) concerns a car loan. In 2019, he totaled the car in an accident. After that, he claimed he could not afford to continue making the loan payments for a car he no longer had. He stated he needed to take care of his wife, who was pregnant at the time. As of his hearing date, he had not made written contact with the creditor to settle, pay, or resolve the debt. He intends to resolve the debt sometime in future. He averred that in 2020, he contacted the creditor asking for a possible settlement. He was asked to submit his request in writing, and he never did.

SOR ¶ 1.b (\$8,662) concerns a car repossession. Applicant purchased a car. In 2013, he voluntarily surrendered it to the creditor because he could not afford to continue making the payments. The creditor charged off the debt. The account remains delinquent. After 2013, he did not contact the creditor to settle, pay, or resolve the debt. (Tr. 47-48)

SOR ¶ 1.c (\$6,5622) concerns a loan Applicant stated he made in 2013 to support his family and later failed to repay. He has not contacted the creditor to resolve the debt, and the debt remains delinquent. (Tr. 47-48)

SOR ¶ 1.d (\$6,195) concerns a delinquent, joint credit-card account that Applicant stopped paying in 2015. He has not contacted the creditor to resolve the debt, and the account remains delinquent. (Tr. 48-49)

SOR ¶ 1.e (\$2,463) concerns furniture Applicant claimed his wife purchased without his knowledge. He claimed not knowing about this account until 2020. The account was charged off in 2017. He testified he contacted the creditor three weeks before his hearing (after receipt of the SOR) to resolve the debt. He was offered a settlement for about \$1,200, but he did not have the financial means to take the offer. The account remains delinquent. (Tr. 49-50)

SOR ¶ 1.f (\$50) alleges a delinquent account for communication services that Applicant denied and claimed he disputed. After the hearing, he submitted documentary evidence showing he paid the debt on October 14, 2021. (AE D) He also established a payment schedule for another debt with the same creditor, agreeing to pay \$179 in October, and twice in November 2021. (AE D) AE E shows he paid another \$99 debt on October 24, 2021. (Tr. 50)

SOR ¶ 1.g – withdrawn on Government’s motion.

SOR ¶ 1.h (\$1,343) concerns a 2013 loan Applicant made and failed to repay. He has not contacted the creditor to resolve the debt, and the account remains delinquent. (Tr. 52)

SOR ¶ 1.i (\$1,158) alleges a 2012 delinquent account to a communications services provider that Applicant denied and claimed it was not his account. The debt is established by the credit reports in evidence. Applicant claimed he had the same communications services provider until recently, when he exchanged providers, and was not delinquent. He failed to submit documentary evidence to corroborate his claim.

SOR ¶ 1.j (\$2,828) alleges a delinquent child-support obligation placed for collection. During his hearing, Applicant denied being in arrears or being delinquent in his support obligation. After the hearing, Applicant submitted documentary evidence from his state’s child support enforcing agency showing his payment record between November 2018 and November 2021. (AE B) During the period of the report, Applicant was sometimes current and other times delinquent. As of November 2021, he was \$1,207 in arrears.

SOR ¶ 1.k (\$1,226) alleges a delinquent account to a communications services provider that Applicant denied and claimed it was not his account. The debt is established by the credit reports in evidence. Applicant claimed he had another communications services provider until recently, and then he changed to the provider alleged in SOR ¶

1.k. He averred he did not know he was delinquent on his account. He failed to submit documentary evidence to corroborate his claim.

SOR ¶ 1.I (\$409) alleges a delinquent account to a communications services provider that Applicant denied and claimed it was not his account. The credit reports in evidence establish it as Applicant's account and show he stopped making payments on 2018.

The Government questioned Applicant about three delinquent accounts not alleged in the SOR. The first is for \$217 to a power company. Applicant claimed he paid it during the summer of 2017. After the hearing, he submitted documentary evidence showing he paid it on October 25, 2021. The second is a \$3,691 debt to a telecommunications services provider. Applicant admitted it was his account and that it was unresolved. (Tr. 59-60) The third is a debt for \$594 owed to a communications services provider. The account is unresolved.

At his hearing, Applicant testified he did not have a written budget, but claimed he was following a budget. Post-hearing, he submitted a written budget showing a \$5,409 monthly income, monthly expenses of \$4,395, and \$1,000 remainder. (AE A) He presented no evidence to show he has participated in financial counseling.

Applicant attributed his financial problems to unemployment and underemployment after his discharge from the military, his divorce from his first wife, and his separation from his current wife. With the exception of the garnishment, Applicant presented no evidence of any payments made toward the debts alleged in the SOR, until after he was issued the SOR. None of his payments predate his hearing. He stated that he was concentrating on paying the child-support garnishment, providing support for his other children, and the loan for his current car. He implied that his income is insufficient to pay for his living expenses and delinquent debts. Applicant testified that when he approached his creditors seeking a settlement, he was asked for large sums of money that he could not afford.

Applicant admitted that letting his finances suffer was a careless and an irresponsible thing to do. He stated:

I put myself in a lot of bad positions. I've allowed relationships to take the best of me. I allowed my emotions, as far as being relationships, to take the, to get the best of me. I wanted to make sure I took care of my family first I was just trying to take care of family. Making sure I get them in order. Putting things on the back burner, and then, forgetting about it. Not getting back to it in time. And then, just I wasn't keeping a budget. I didn't have a budget in order. And I just I allowed myself to get really irresponsible when it came to a lot of money things. (Tr. 63)

Applicant expressed his desire to resolve his financial problems. He stated that he takes his financial problems seriously. He understands the seriousness of having negative information on his credit. He noted that the Army and the federal contractors he

has worked for have trusted him with a clearance. He believes that he has establish that he is trustworthy and can be issued a clearance. He promised to resolve his financial situation in the near future.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established

for issuing a clearance. (See Section 7 of EO 10865; See also EO 12968, Section 3.1(b) (listing 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 financial history, which includes 11 delinquent debts, unresolved for many years, is sufficient to raise the above disqualifying conditions.

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 and underemployment after his discharge from the military, his divorce from his first wife, and his separation from his current wife. However, several debts became delinquent before his discharge from the military, and others became delinquent after he was fully employed with federal contractors. The only debt that is being paid is through involuntary garnishment of his pay.

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 the security concerns arising out of Applicant's delinquent debts are not mitigated.

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. I also considered Applicant's honorable military service.

I note that Applicant started the process to establish his financial responsibility, albeit after receipt of the SOR. My decision should not be construed as a determination

that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

Financial considerations security concerns are not mitigated at this time. 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | Against Applicant |
| Subparagraphs 1.a-1.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | Withdrawn |
| Subparagraphs 1.h-1.i: | Against Applicant |

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge