



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



In the matter of:)
)
) ISCR Case No. 20-02367
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

2/02/2022

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 April 7, 2021, the Defense Counterintelligence and Security Agency 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; 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 within the DOD on June 8, 2017.

On April 20, 2021, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on October 6, 2021. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 5. Applicant did not submit a response to the FORM or file objections to any evidence offered. All Items are admitted into evidence. The case was assigned to me on December 1, 2021.

Findings of Fact

Applicant denied all of the SOR allegations in ¶¶ 1.a through 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He served in the military from 2004 to 2014 and received an honorable discharge. He earned a bachelor's degree in 2016. He married in 2007 and divorced in 2009. He remarried in 2012 and divorced in 2014. He has a 14-year-old child. He has cohabitated with a woman since 2017. He has been employed by a government contractor since December 2016. (Item 2)

Applicant has five delinquent credit card debts totaling approximately \$24,254 (SOR ¶¶ 1.b-\$4,137; 1.c-\$6,502; 1.d-\$2,946; 1.e-\$7,333 and 1.f-\$3,336). In his August 2019 security clearance application, he disclosed the debts in SOR ¶¶ 1.b, 1.d, and 1.f. He stated that these debts were unresolved and he expected them to be removed from his credit report at the end of the year. (Item 2)

During Applicant's September 2019 interview with a government investigator, he was confronted with the debts alleged in SOR ¶¶ 1.b through 1.f and acknowledged he owed each debt. He told the investigator he did not intend on paying these debts and was waiting for them to fall off his credit report. He stated that his financial difficulties arose when he was discharged from the military (2014) and when his former spouse left him. He said he had difficulties paying his bills. The debt is SOR ¶ 1.a (\$985) is a collection account for a medical debt that became delinquent in 2016. (Items 3 and 5)

In Applicant's April 2021 answer to the SOR, he denied each alleged debt and said the accounts were past the statute of limitations and no longer on his credit report. Credit reports from September 2019 and January 2020 reflect the delinquent debts. No other evidence was provided by Applicant. (Items 1, 4, and 5)

Policies

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

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has six delinquent debts that he does not intend to pay because he is relying on the statute of limitations. 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 stated that he experienced financial difficulties in about 2014. He acknowledged the legitimacy of the credit card debts in SOR ¶¶ 1.b through 1.f, but does not intend to pay them. He denied the debt in SOR ¶ 1.a for medical services that was incurred in 2016. Perhaps at one time, Applicant was unable to pay these debts due to his financial situation. However, he has been steadily employed since 2016, and he clearly stated in his SCA, his background interview, and his answer to the SOR that he does not intend to pay his delinquent debts. He is relying on the statute of limitations and the removal of debts from his credit reports after seven years to resolve these debts.

Applicant's delinquent debts are unresolved and his failure to address them for years casts doubt on his current reliability, trustworthiness, and good judgment. He said his financial situation arose when he was separated from his wife and had been discharged from the military. The evidence reflects he was discharged in 2014 and he divorced the same year. He failed to provide evidence that he acted responsibly once he gained employment in 2016. There is no evidence Applicant received financial counseling or made good-faith efforts to resolve his legitimate debts. To the contrary, he has ignored them and is relying on the statute of limitations. He did not provide evidence that the debts are unsubstantiated. None of the mitigating conditions 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.

The Appeal Board provides a summary regarding “non-collectable” debts:

The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitations, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness in making a decision about the applicant’s security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner.” ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018) quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan 19, 2011)

Applicant’s reliance on the statute of limitations to mitigate the security concerns raised by his numerous delinquent debts is misguided. Insufficient evidence was provided, and he failed to meet 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 all these reasons, I conclude Applicant failed to mitigate the security concerns raised 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.f:	Against 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