



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



In the matter of:)
)
) ISCR Case No. 21-00675
)
Applicant for Security Clearance)

Appearances

For Government: Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/02/2022

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 June 9, 2021, the Defense Counterintelligence and Security Agency (DCSA) 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; 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.

Applicant answered the SOR on July 7, 2021, and 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 September 9, 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 provided a response to the FORM, did not object to the Government's evidence, and submitted documents marked as Applicant Exhibit (AE) A through J. The Government had no objections. All evidence was admitted. The case was assigned to me on November 4, 2021.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.e through 1.l, and 1.p. He denied the SOR allegations in ¶¶ 1.b through 1.d, and 1.m through 1.o. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He married in 2000 and divorced in October 2018. He has two children from the marriage, ages 16 and 12. He was employed from 2001 to 2018. He was unemployed from November 2018 until July 2019. He worked for two different employers until he was hired by his present employer in April 2020. (Item 3)

Applicant and his wife filed Chapter 13 bankruptcy in 2010 and had their debts discharged in 2015. He and his wife had considerable consumer debt and judgments discharged. (Item 2)

Since the bankruptcy discharge, Applicant has accumulated numerous delinquent debts that are alleged in the SOR. A couple became delinquent in 2018, but most happened in 2020. He disputed three judgments that were alleged (SOR ¶¶ 1.b-\$4,991; 1.c-\$1,959; and 1.d- \$7,145). It appears these are included in his bankruptcy discharge and do not appear on his October 2020 credit report. These allegations are resolved in Applicant's favor. His bankruptcy was not alleged in the SOR. Any derogatory information that was not alleged will not be considered for disqualifying purposes, but may be considered, in the application of mitigating conditions, and when making a whole-person analysis.

Applicant attributed his current financial difficulties to his divorce and period of unemployment. In his June 2020 security clearance application (SCA), he disclosed his child support was in arrears (approximately \$10,500) due to his unemployment. He noted he was making timely payments and additional payments each month to apply to the arrearage. SOR ¶ 1.e reflects the amount in arrears is \$11,137. He did not disclose any other financial delinquencies. (Items 2, 3)

In his FORM response, Applicant provided a copy of his current child support payment record. It reflects he is making regular payments and additional payments to reduce the arrearage. As of July 2021 the arrearage balance is \$6,803. Applicant is resolving the debt in SOR ¶ 1.e. (Answer to SOR; AE H)

In October 2020, Applicant was interviewed by a government investigator as part of his background investigation. He confirmed with the investigator his child support

arrears, but did not disclose any other delinquent debts until confronted with them by the investigator. For each delinquent debt alleged in the SOR, he explained that he could not recall when the account was opened. He stated the accounts were held jointly with his wife, and she was responsible for paying the debt, but agreed he would pay it and will have it removed from his credit report. He intended to work with his ex-wife to get the debts paid. He anticipated paying the delinquent accounts by November 2025. (Item 4)

Applicant acknowledged to the investigator that this debt in SOR ¶ 1.a (\$26,346), was for an involuntary car repossession and there was likely a delinquent balance owed. Applicant's October 2020 credit report shows that the vehicle was repossessed and a possible balance was due. In his answer to the SOR, Applicant stated his ex-wife was paying this loan and he provided the page from his credit report showing that the current balance owed is \$15,569 as of June 2021, and that the account was closed in December 2018. It is likely the creditor agreed to return the vehicle to Applicant's wife, permit her to bring the payments current and allow her to make monthly payments. I find in Applicant's favor on this allegation. (Item 2 at page 61; Item 5)

Applicant stated that he is unable at this time to pay the charged-off debts alleged in SOR ¶¶ 1.g (\$1,844), 1.i (\$1,046), and 1.p (\$1,346), but intends to in the future. These debts are unresolved. (Items 2, 5)

Applicant stated in his answer to the SOR that he was making payments of \$200 on the collection account alleged in SOR ¶ 1.f and had reduced the balance to \$2,700. He did not provide documents to substantiate his statement. The debt is unresolved. (Items 2, 5)

Applicant provided a document to show that in October 2021, he made a payment agreement with the creditor for the collection account alleged in SOR ¶ 1.h (\$1,571). He will pay \$77 a month until May 2022 to resolve the debt. This debt is being resolved. (AE E)

In Applicant's response to the FORM, he made a copy of the SOR and scribbled notations next to some of the allegations. His notations do not substantiate that he has made payments to resolve the charged-off store card account alleged in SOR ¶ 1.j (\$1,045). This debt is not resolved. (AE B)

Applicant provided a July 2021 payment agreement with the creditor in SOR ¶ 1.k (\$1,013) to pay \$50 a month. He made payments in July, August, and September 2021. The debt is being resolved. (AE J)

Applicant made four phone payments (three payments of \$115 and one of \$119) from June 2021 to September 2021 for the charged-off store card account alleged in SOR ¶ 1.l (\$694). There is no indication that Applicant has a payment agreement with the creditor, but it does appear he is making regular payments towards the debt. Applicant is resolving this debt. (AE C)

Applicant denied the collection account in SOR ¶ 1.m (\$620) stating in his SOR answer, “this account was taken care of on 2/22/21 and closed on 3/25/2021.” (Item 2) He did not provide documents to substantiate the account was paid. It is unresolved.

Applicant denied the collection account for telecommunication services in SOR ¶ 1.n (\$362) indicating that “it will be paid off on 7/22/21.” He did not provide documents to substantiate the account was paid. It is unresolved.

Applicant provided documents to show that he resolved the collection account for the store credit account alleged in SOR ¶ 1.o (\$407) in July 2021. (Item 2 page 60)

Applicant did not provide evidence of his current finances, income, expenses, or budget. There is no evidence he has recently attended any type of financial counseling.

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 handling 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; and

- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that began accumulating in approximately 2018 and continued to 2020 when many were charged off because of his nonpayment. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to a divorce in 2018 combined with a period of unemployment. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant provided evidence that he has resolved some debts, made some payments towards others, but also has debts that he cannot pay at this time. Applicant and his wife had a substantial amount of delinquent debt discharged in bankruptcy in 2015. They again accumulated numerous delinquent debts. It appears he was overextended financially, which was then exacerbated when he went through a divorce and was unemployed. He is again digging himself out of debt, and is paying some of his creditors. AG ¶ 20(b) has some application.

There is no evidence Applicant has participated in financial counseling. He did not provide evidence regarding his current finances. Applicant has paid some of his delinquent debts, but at this juncture, there is insufficient evidence to conclude that his financial issues are under control. AG ¶ 20(c) does not apply.

Applicant has made payments and resolved some delinquent debts as noted in the findings of fact. AG ¶ 20(d) applies to those debts. The fact that the three judgments alleged in SOR ¶¶ 1.b, 1.c, 1.d were resolved through bankruptcy and Applicant is no

longer legally responsible for them, does not equate to a good-faith effort to repay his creditors or otherwise resolve his debts.

Based on Applicant's financial history, insufficient evidence about his current finances, and unreliable past financial record, I am not convinced that future financial problems are unlikely to recur. After having his debts discharged in bankruptcy in 2015, Applicant again accumulated numerous delinquent debts. I have considered his divorce and unemployment, but it is too soon to conclude that Applicant has a firm grasp on preventing future financial problems or has established a reliable financial track record. His recurring financial issues cast doubt on his reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply. Despite some mitigation, it is insufficient to overcome the security concerns raised.

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.

Applicant 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Subparagraph: 1.o:	For Applicant
Subparagraph: 1.p:	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