



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



In the matter of:)
)
) ISCR Case No. 21-00261
)
Applicant for Security Clearance)

Appearances

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

02/22/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On June 18, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on October 27, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 3, 2021. As of December 14, 2021, he had not responded. The case was assigned to me on February 1, 2022. The Government exhibits included in the FORM and the documents attached to Applicant’s response to the SOR are admitted in evidence.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor for whom he has worked since May 2020. He served on active duty in the U.S. military, earning an honorable discharge. He has a high school degree, which he earned in 2009. As of 2017, he has separated from his spouse, whom he married in 2013. He has a seven-year-old child. (Items 2, 3)

The SOR alleges Applicant owes 11 delinquent debts totaling about \$18,000 (SOR ¶¶ 1.a-1.k). The debts include, among other things, unpaid rent, unpaid personal loans, and unpaid utilities. While Applicant denies several of these debts in his response to the SOR, I find that the SOR allegations are established through credit reports and Applicant's admissions. (Items 1-6)

Applicant attributed his financial problems to his and his now estranged spouse's overspending. He was unemployed for a period from about April 2020 until May 2020 and from July 2018 until October 2018. He also separated from his spouse in 2017. (Items 1, 2, 3)

The \$181 insurance debt alleged in SOR ¶ 1.a has not been resolved. In his response to the SOR, Applicant claims that he has paid this debt, however, he did not provide any documentation establishing it was paid. This debt is no longer listed on any credit reports after the February 4, 2021 Equifax credit report. (Items 1, 4-6)

The \$765 debt for rent alleged in SOR ¶ 1.b has been resolved. In his response to the SOR, Applicant stated that he has paid this debt in full, and he provided an April 9, 2021 letter from the creditor corroborating the account has been paid. (Item 1)

The \$354 debt to a utility company alleged in SOR ¶ 1.c has not been resolved. In his response to the SOR, Applicant claims that he has paid this debt, however, he did not provide any documentation establishing it was paid. This debt is no longer listed on any credit reports after the February 4, 2021 Equifax credit report. (Items 1, 4-6)

The \$1,568 telecommunications debt alleged in SOR ¶ 1.d has not been resolved. In his response to the SOR, Applicant admits this debt and claims that he will work on paying it. Applicant provides no documentation showing his efforts to resolve this debt. (Item 1)

The \$3,502 debt alleged in SOR ¶ 1.e has been resolved. In his response to the SOR, Applicant stated that he has paid this debt in full, and he provided a February 25, 2021 letter from the creditor corroborating the account has been paid. (Item 1)

The \$3,021 debt alleged in SOR ¶ 1.f has not been resolved. In his response to the SOR, Applicant admits this debt and claims that he will work on paying it. Applicant provides no documentation showing his efforts to resolve this debt. (Item 1)

The \$4,907 vehicle note debt alleged in SOR ¶ 1.g has not been resolved. In his response to the SOR, Applicant admits this debt and claims that he will work on paying it. Applicant provides no documentation showing his efforts to resolve this debt. (Item 1)

The \$3,769 debt alleged in SOR ¶ 1.h has not been resolved. In his response to the SOR, Applicant admits this debt and claims that he will work on paying it. Applicant provides no documentation showing his efforts to resolve this debt. (Item 1)

The \$339 debt alleged in SOR ¶ 1.i has not been resolved. In his response to the SOR, Applicant claims that the “debt was an error and has been removed from all my credit reports.” (Item 1) Applicant provides no documentation showing the nature of his dispute or his efforts to resolve this debt. This debt is no longer listed on any credit reports after the February 4, 2021 Equifax credit report. (Items 1, 4-6)

The \$263 debt on an account placed for collection by a cable-service provider alleged in SOR ¶ 1.j has not been resolved. In his response to the SOR, Applicant claims that he has paid this debt, however, he did not provide any documentation establishing it was paid. This debt is no longer listed on any credit reports after the May 15, 2020 credit report. (Items 1, 4-6)

The \$102 debt on an account placed for collection by a telecommunications provider alleged in SOR ¶ 1.k has not been resolved. In his response to the SOR, Applicant claims that he has paid this debt, however, he did not provide any documentation establishing it was paid. This debt is no longer listed on any credit reports after the May 15, 2020 credit report. (Items 1, 4-6)

Applicant stated that he intends to pay some of the debts in the SOR. He did not respond to the FORM, so more recent information about his finances is not available.

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 has a history of financial problems, including unpaid rent, unpaid personal loans, and unpaid utilities. The evidence 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;
- (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 his and his now estranged spouse's overspending. He was unemployed at times in 2018 and 2020, and he separated from his spouse in 2017.

Applicant's marital separation and unemployment were beyond his control. Applicant's overspending was within his control.

Applicant provided documentary corroboration that the \$765 debt alleged in SOR ¶ 1.b and the \$3,502 debt alleged in SOR ¶ 1.e were paid prior to the issuance of the SOR. SOR ¶¶ 1.b and 1.e are concluded for Applicant.

There is no documentary evidence of payments or favorable resolution of the remaining SOR debts. Applicant stated that he intends to pay some of the SOR 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).

Applicant states that he has paid some of the other debts in the SOR, but he provides no documents to corroborate his payments of these debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Applicant also claims that some of the debts in his SOR are no longer a concern because they do not appear on his credit reports. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 15, 2015). Without additional, credible evidence, the absence of Applicant's debts on a later credit report does not necessarily show that Applicant has favorably resolved those debts.

Applicant states that one of the SOR debts was "an error" but fails to articulate a reasonable basis to dispute this debt, nor does he provide documented proof to substantiate the basis of his unarticulated dispute. (AG ¶ 20(e))

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 ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns 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 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. I also considered Applicant's honorable military service.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.k:	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.

Benjamin R. Dorsey
Administrative Judge