



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



In the matter of:)
)
) ISCR Case No. 21-00808
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On June 25, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 29, 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 12, 2021. As of December 27, 2021, he had not responded. The case was assigned to me on February 9, 2022. The Government exhibits included in the FORM are admitted in evidence. Applicant did not attach any documents to his response to the SOR.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor for whom he has worked since July 2019. He served on active duty in the U.S. military, earning an honorable discharge. He has two Associate's degrees, the latest of which he earned in April 2014. He is divorced, having been married from 1998 until 2003. He has two children. Applicant has a 90% Veterans Affairs (VA) disability rating as a result of his service in the U.S. military. Applicant applied for and successfully obtained a security clearance during his time in the military. (Items 4, 5, 6)

The SOR alleges Applicant owes 15 delinquent debts totaling about \$36,000 (SOR ¶¶ 1.a-1.o). The debts include, among other things, unpaid rent, an unpaid personal loan, an unpaid auto loan, and unpaid medical bills. While Applicant denied several of these debts in his response to the SOR, I find that the SOR allegations are established through credit reports, a record of civil judgment filing, and Applicant's admissions. (Items 1, 3, 5-9)

Applicant attributed some of his financial problems to the federal government seizing his 2017 tax refund in order to offset another federal debt, causing several checks that he had written to be returned for insufficient funds. He also blamed unspecified financial "mistakes" that he made. With respect to his delinquent medical debts, Applicant claimed, without corroborating documentation, the VA is responsible, but it has yet to pay the debts (SOR ¶¶ 1.c, 1.d, 1.h, 1.k, 1.n). He was unemployed for a period from about May 2019 until July 2019 and from December 2016 until August 2018. (Items 3, 4, 5, 6)

The \$1,913 telecommunications debt alleged in SOR ¶ 1.a has not been resolved. In his response to the SOR, Applicant admitted this debt and claimed that he will work on paying it. Applicant provided no documentation showing his efforts to resolve this debt. (Items 1, 3, 5-8)

The \$1,854 lease debt alleged in SOR ¶ 1.b has not been resolved. In his response to the SOR, Applicant disputed this debt, claiming that his former landlord unfairly charged him for carpet replacement in his old apartment. Applicant claimed that his security deposit should have covered this charge, but he provided no documentation substantiating the basis of his dispute or his efforts to resolve this debt. (Items 1, 3, 5-8)

The delinquent medical debts alleged in SOR ¶¶ 1.c, 1.d, 1.h, 1.k, and 1.n have not been resolved. In his response to the SOR, Applicant claimed that the VA is responsible for paying these medical debts, however, he provided no documents to show the VA is responsible or any other efforts to resolve these debts. (Items 1, 3, 5-8)

The \$673 personal loan debt alleged in SOR ¶ 1.e has not been resolved. In his response to the SOR, Applicant admitted this debt and claimed that he will work on paying it. Applicant provided no documentation showing his efforts to resolve this debt. (Items 1, 3, 5-8)

The \$344 overdraft charge debt alleged in SOR ¶ 1.f has not been resolved. In his response to the SOR, Applicant admitted this debt and claimed that he will work on paying it. Applicant provided no documentation showing his efforts to resolve this debt. (Items 1, 3, 5-8)

The \$238 credit card debt alleged in SOR ¶ 1.g has not been resolved. In his response to the SOR, Applicant admitted this debt and claimed that he will work on paying it. Applicant provided no documentation showing his efforts to resolve this debt. (Items 1, 3, 5-8)

The \$192 internet service provider debt alleged in SOR ¶ 1.i has not been resolved. In his response to the SOR, Applicant denied this debt, claiming that the creditor charged him for an activation fee for internet service that “did not work at my residence at the time.” He provided no documentation substantiating the basis of his dispute or his efforts to resolve this debt. (Items 1, 3, 5-8)

The \$173 insurance debt alleged in SOR ¶ 1.j has not been resolved. In his response to the SOR, Applicant admitted this debt and claimed that he has paid it. Applicant did not provide any documentation establishing it was paid. (Items 1, 3, 5-8)

The \$20,961 automobile loan debt alleged in SOR ¶ 1.l has not been resolved. In his response to the SOR, Applicant claimed that he returned the vehicle that secured this loan to the dealership and should not be responsible for the balance on the loan. He claimed that the debt no longer appears on his credit reports. He provided no documentation substantiating the basis of his dispute or his efforts to resolve this debt. This debt is listed on both his January 2021 and September 2019 credit report. (Items 1, 3, 5-8)

The \$946 telecommunications debt alleged in SOR ¶ 1.m has not been resolved. In his response to the SOR, Applicant claimed that he is not responsible for this debt because he did not avail himself of the service for which he was charged. Applicant provided no documentation substantiating the basis of his dispute or his efforts to resolve this debt. The debt is not listed on a credit report after the September 2019 report. (Items 1, 3, 5-7)

The \$5,725 judgment alleged in SOR ¶ 1.o has not been resolved. In his response to the SOR, Applicant claimed that he does not know anything about this judgment. He stated that he disputed the judgment, although it is unclear to whom or in what manner he made the dispute. He provided no evidence of his efforts to resolve this dispute. (Items 1, 3, 9)

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.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2019. Applicant failed to list any of the delinquent debts listed in the SOR. In his October 2019 subject interview, the investigator had to confront Applicant about his

delinquent debts. Applicant claimed that he failed to list the delinquent debts on his SF 86 or volunteer them during his subject interview because of oversight. In his response to the SOR, Applicant admitted that he failed to disclose his delinquent debts in the SF 86, but said that he made a mistake because he was tired and wasn't paying enough attention to the question. (Items 1, 3-5)

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 an unpaid auto loan, an unpaid personal loan, and unpaid telecommunications debt. 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 an unexpected offset of his 2017 income tax refund, resulting in bounced checks. He also acknowledged making unspecified “mistakes” with respect to his finances. He was unemployed at times in 2019 and from part of 2016 through part of 2018.

Applicant’s unemployment was beyond his control. Applicant’s writing checks on funds that had not yet cleared his account and making financial “mistakes” were not beyond his control.

There is no documentary evidence of payments or favorable resolution of the SOR debts listed in paragraph 1. 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 stated that he has paid some of the other debts in the SOR, but he provided 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 claimed 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.

For various reasons, Applicant states that he is not responsible for the debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.h, 1.i, 1.k, 1.l, 1.m, 1.n, and 1.o. He disputes that he owes these debts. However, for each of these debts, he either fails to provide documented proof to substantiate the basis of his dispute, or he fails to provide evidence of his efforts to resolve the issue. (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.

Guideline E (Personal Conduct)

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose any of his delinquent debts on his SF 86. During his subject interview, when an investigator confronted him with his delinquent debts, his ability to discuss some of these delinquent debts shows that he was aware of them. Applicant applied for and obtained a security clearance prior to this investigation, indicating that he was familiar with the clearance process. These considerations as well as Applicant's failure to divulge these debts during his subject interview until the investigator confronted him are sufficient to raise the above disqualifying condition.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not correct his omission of divulging his delinquent debts until after the investigator confronted him during his subject interview. There is insufficient corroborating evidence that Applicant's misleading behavior is infrequent or an outlier. His omission leaves me with questions about his reliability and good judgment. Personal conduct 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 and Guideline E 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 and personal conduct 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.o:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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