



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



In the matter of:)
)
) ISCR Case No. 21-01564
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2022

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 September 7, 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 November 16, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 3, 2021. As of January 25, 2022, he had not responded. The case was assigned to me on February 28, 2022. The Government exhibits included in the FORM are admitted into evidence without objection. Applicant did not provide any documents with his response to the SOR.

Findings of Fact

Applicant is a 63-year-old employee of a defense contractor for whom he has worked since July 2015. He served on active duty in the U.S. military from 1982 until 2004. He earned a bachelor's degree in 2005. He has been married since 1982. He has three adult children. (Items 4, 5)

The SOR alleges Applicant owes seven delinquent debts totaling about \$24,000 (SOR ¶¶ 1.a-1.g). The debts include, among other things, an unpaid automobile loan, unpaid student loans, unpaid residential lease damages, an unpaid personal loan, and an unpaid credit card. Applicant admitted the debts in the SOR, with comment, except for the debt listed in SOR ¶ 1.g., which he neither admitted nor denied. I find that the SOR allegations are established through a credit report and Applicant's admissions. (Items 1, 3-6)

Applicant attributed his financial problems to the 2012 Government shutdown, which he says caused him to lose his job. He also blames unspecified poor business choices. He also asserts that he and his wife sometimes forgot to pay their bills. (Items 1, 3, 4, 5)

The \$9,056 automobile loan debt alleged in SOR ¶ 1.a has not been resolved. In his interview, Applicant disputed the debt and alleged that his daughter had stolen money from him because he never agreed to co-sign for his daughter's car. However, in his response to the SOR, he asserted that he did not realize that he co-signed for the loan, but acknowledged signing loan documents. He stated that his daughter will make payments on the debt to get it caught up. Applicant provided no documents to substantiate the basis of his claimed dispute or any other efforts to resolve the debt. (Items 1, 3-6)

The \$5,080 and \$3,555 student loan debts alleged in SOR ¶¶ 1.b and 1.d have not been resolved. In his response to the SOR, Applicant asserted that these debts have been paid and that he provided a document to that effect. However, he did not provide any documentation establishing the debts were paid or otherwise resolved. (Items 1, 3-6)

The \$4,113 rental debt alleged in SOR ¶ 1.c has not been resolved. In his response to the SOR, Applicant disputed this debt, asserting that he had been overcharged for damages to his former residence that he thought were merely "wear and tear." Applicant claimed that he hired an attorney to resolve the situation, but provided no documentation substantiating the basis of his dispute or his other efforts to resolve this debt. (Items 1, 3-6)

The \$1,497 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 had made arrangements to pay the debt. Applicant provided no documentation showing his efforts to resolve this debt. (Items 1, 3-6)

The \$86 credit card debt alleged in SOR ¶ 1.f has not been resolved. In his response to the SOR, Applicant averred that he has paid this debt in full and that he provided a document to that effect. However, he did not provide any documentation establishing the debt was paid or otherwise resolved. (Items 1, 3-6)

The \$1,494 debt alleged in SOR ¶ 1.g has not been resolved. In his response to the SOR, Applicant alleged that he is unaware of this debt. He claimed that he has done some research, but has not been able to locate the debt on his credit reports. He claimed he will further research it and make arrangements to resolve it. Applicant provided no documentation showing his efforts to resolve this debt. (Items 1, 3-6)

Applicant stated that he intends to resolve the debts in the SOR. He asserted that he has hired an attorney to help him resolve his delinquent debts, but he provided no documentation to corroborate this action or any other efforts he made to resolve these debts. He did not respond to the FORM, so more recent information about his finances is not available. (Items 1, 3-6)

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 within DOD 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 delinquencies, including an unpaid automobile loan, unpaid student loans, an unpaid personal loan, and unpaid damages pursuant to a residential lease. The evidence is sufficient to raise the above disqualifying conditions and shifts the burden to Applicant to provide evidence in mitigation.

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 the Government shutdown in 2012 leading to his loss of employment, failing to remember to pay bills, and unspecified poor business decisions. Applicant's unemployment was beyond his control. Applicant's failing to remember to pay his bills and making poor business decisions were within his control.

Applicant provided no documentary evidence of payments or favorable resolution of the 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 wrote in his SOR response that he has paid some of the debts listed 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).

While Applicant claimed to have hired an attorney to help him resolve his financial issues, he has not provided evidence of who this attorney is or what the

attorney has done to help. Therefore, I cannot determine whether his counseling is from a legitimate and credible source or that the financial issues are being resolved.

Applicant disputed that he owes some of the SOR 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.

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 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
Subparagraphs 1.a-1.g:	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