



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



In the matter of:)
)
) ISCR Case No. 21-01822
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/22/2022

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 August 26, 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 September 9, 2021, Applicant's 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 November 16, 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 2 through 6. (Item 1 is the SOR) 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 March 2, 2022.

Findings of Fact

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

Applicant is 49 years old. He married in 2009 and has two children, ages 12 and 10 years old. He served in the military from 1993 to 1997 and was honorably discharged. He has worked for the same employer since 2008.

Applicant attributes his financial difficulties to a period in 2018, when the tenants living in a property he rented failed to pay the rent, and he was unable to pay the mortgage. The property was foreclosed. In his background investigation with a government investigator, he indicated once the property was foreclosed and sold, he had no future issues with it. He also stated that his financial problems were due to paying daycare expenses, and he had too much debt. (GE 4)

In his SOR answer, Applicant admitted he owes the debt alleged in SOR ¶ 1.a (\$27,302). The debt, which is listed on his credit report as a line-of-credit has been charged off. Applicant did not provide any information of his efforts to resolve the debt. It is unclear if Applicant believes this debt was included with his mortgage foreclosure, which occurred in 2018. He did not provide evidence as to the debt's current status. It is unresolved. (Item 2, 4)

The debt alleged in SOR ¶ 1.b (\$10,867) is credit card debt. During Applicant's June 2020 background interview, he told the government investigator that he had too much debt and was unable to make payments on this account. He began receiving collection notices and phone calls regarding the debt in about 2017. He made no attempt to pay the debt and forgot about it, but now had enough earnings to begin paying it in August 2020. He would arrange an automatic payment plan. He did not provide any evidence that he has made arrangements to pay this debt. It is unresolved. (Item 4, 5, 6)

The debt alleged in SOR ¶ 1.c (\$8,328) is a credit card debt. Applicant acknowledge to the government investigator that he owed the debt and was unable to pay it. He began receiving collection notices by mail and phone in 2016. He forgot about the debt. He told the investigator that he now is earning enough to pay the debt and would begin paying \$150 a month beginning in August 2020. He did not provide any evidence that he has made arrangements to pay this debt. It is unresolved. (Items 4, 5, 6)

Applicant provided documentation that the debt in SOR ¶ 1.d (\$57) is resolved. (Item 2). Credit reports from May 2020 and March 2021 corroborate the delinquent debts alleged in SOR ¶¶ 1.a, 1.b and 1.c. (Items 5, 6)

Applicant did not provide any evidence he has participated in financial counseling. He did not provide information as to his current income, expenses, budget or financial stability.

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; and

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

Applicant has three delinquent debts that began accumulating in 2016 that he is unable to pay. 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 admitted he owes the debts in SOR ¶¶ 1.a, 1.b, and 1.c and they are unresolved. He attributed his financial problems to tenants that failed to pay their rent and he had his property foreclosed. He also admitted he had daycare costs and did not have the money to pay his debts. He has not provided any evidence to show that he has made efforts to resolve any of the alleged debts. Although, the foreclosure may have been due to circumstances beyond his control, his credit card debts were in collection in 2016 and 2017, before the tenant issue arose. Applicant has not provided evidence that he acted responsibly under the circumstances.

During his background interview Applicant told the investigator he was making payment arrangements to resolve the two credit card debts alleged, but failed to provide evidence that he is making the promised payments. The circumstances surrounding the foreclosure may have been beyond his control, but Applicant failed to act responsibly under the circumstances even after promising to make payments. His delinquent debts are recent and there is no evidence he has received financial counseling, that he made good-faith efforts to resolve the debts, or that there are clear indications his financial problems are being resolved. The above mitigating conditions do not 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.

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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For 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