



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



In the matter of:)
)
) ISCR Case No. 20-00757
)
Applicant for Security Clearance)

Appearances

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

02/22/2022

Decision

PRICE, Eric C., 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 25, 2020, 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 August 3, 2021, Applicant answered the SOR, 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 October 23, 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 3 through 5. Applicant submitted no response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on February 1, 2022.

Findings of Fact

Applicant admitted the sole SOR allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He earned a bachelor's degree in 2004 and subsequently attended technical school and community college. Applicant married in 1994, divorced in 2013, reconciled and has cohabitated with his former spouse since 2014. (Items 3, 4)

Applicant completed a security clearance application (SCA) in July 2018 and was interviewed by a government investigator in January 2019. He disclosed a delinquent credit card account (approximately \$66,000). Applicant said he was unable to pay the debt after his contract with a Federal agency ended in May 2015 because of unemployment and underemployment, and noted his ex-wife's spending habits contributed to his financial difficulties and their divorce. He reported unemployment from May 2015 to December 2015, and part-time employment from December 2015 until he secured full-time employment in July 2016. (Items 3, 4)

Applicant stated he used the delinquent credit card to pay health insurance costs and, prior to losing his contractor position, made the minimum monthly payment required under the card agreement. Applicant said he informed the creditor he lost his job and would be unable to make monthly payments in May or June 2015, and reported an account balance of approximately \$55,000 at the time. He said subsequent efforts to settle the account were unsuccessful because he could not afford to pay other monthly living expenses and payments requested by the creditor at that time. Applicant reported the creditor offered credit counseling as a term of an agreement that also required he pay at least two percent of the total balance each month, but that he did not attend credit counseling because he was unable to make the required payments. He reports no payments on the account alleged at SOR ¶ 1.a., since June 2015, and credit records reflect no account activity since December 2015. (Items 3, 4, 5).

During his January 2019 background interview, Applicant reported he had a good job with steady income, that his financial situation was good, that he paid his bills on time and had savings, but said he was unable to repay the delinquent credit card balance. He also disclosed a second delinquent account (\$16,000) with the same creditor, and opined the loan account was likely not reflected in his credit report because it was beyond the statute of limitations and no longer a valid debt. (Item 4)

In his August 2021 answer to the SOR, Applicant admitted owing the debt alleged in SOR ¶ 1.a. He again attributed the delinquency to unemployment and underemployment, and recounted unsuccessful efforts to reach a settlement agreement with the creditor. He noted that after his financial situation improved and the account was

charged off, he continued communications with the creditor in an effort to settle the debt, but made no payments. He said legal experts advised him not to make any payments on the account, because payment on the delinquent debt would extend the period during which the creditor would have legal recourse under state law. He admitted he had made no payments in five years, and stated his belief the statute of limitations barred the creditor from collecting the unsecured debt. He concluded by recounting his service to various U.S. Government entities, including work in Afghanistan. The debt in SOR ¶ 1.a. is not resolved. (Items 2, 3, 4, 5)

Applicant did not provide specific evidence of his current financial budget, savings or expendable income. Credit records submitted by the Government dated December 2019 reflect only two active credit accounts, the account alleged in the SOR and another credit card account with a then current balance of less than \$100. (Item 5)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. However, it may be considered in the application of mitigating conditions and in a whole-person analysis.

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 common sense 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a single delinquent debt that began accumulating in 2015. He disclosed the debt alleged in the SOR and efforts to settle the account in his 2018 SCA and 2019 background interview. Applicant admitted the debt was his in his answer to the SOR. He has provided no evidence of payment on the debt since 2015 or that the debt has been resolved. 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 used the delinquent credit card account alleged in the SOR to pay health insurance costs prior to losing his contracting position in May 2015. He admitted making only minimum payments prior to that time on an estimated account balance of \$55,000. He provided no evidence of payment on the debt since 2015 or evidence the debt has been resolved. AG ¶ 20(a) does not apply.

Applicant attributes his financial issues to unemployment and underemployment, and attributes contemporaneous financial difficulties to his ex-wife's spending habits that contributed to their divorce in 2013. His divorce, unemployment and underemployment from May 2015 to July 2016 were beyond his control. Applicant reported attempts to settle the debt with the creditor from 2015 until at least January 2019, but did not provide documentary evidence of any action on his part to contact the creditor or proof of any payments to resolve the debt. His failure to make a single payment on this delinquent debt once he had the ability to do so after securing fulltime employment in July 2016 was not acting responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant has made no payments on the delinquent account since 2015, and declined to participate in financial counseling offered by the creditor. He reported being advised by legal experts not to make a single payment on the delinquent account to avoid resetting the statute of limitations. Reliance upon a statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigation value. See ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016). Although an applicant legally may rely on the running of a statute of limitation to avoid paying a debt, such reliance does not, by itself, constitute a good-faith effort to resolve debts within the meaning of the Directive. See ISCR Case No. 99-9020 at 6 (App. Bd. June 4, 2001). AG ¶¶ 20(c) and 20(d) 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant divorced in 2013 due in part to his ex-wife's spending habits, was unemployed and underemployed from May 2015 to July 2016. I considered that there is no evidence of additional delinquent accounts since 2019. However, Applicant accumulated a large delinquent debt in the past that he refuses to pay. He has been steadily employed since July 2016 and has refused to pay about \$66,614 in delinquent debt accumulated before becoming gainfully employed. There is no evidence or claim of any payment on the delinquent account since 2015, even though Applicant reports income sufficient to pay other expenses and to make contributions to a savings account. Although his decision not to make any payments on this debt may have been a sound financial avenue for Applicant to follow to eventually put his finances in order and clear his negative credit history, his decision also raises potentially disqualifying and current security concerns under the Directive. The potential for recurrence is significant in light of Applicant's admission that he was also delinquent on a \$16,000 loan from the same creditor, a debt he described as no longer valid because it was beyond the statute of limitations for collection. He 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

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge