



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



In the matter of:)
)
) ISCR Case No. 20-01600
)
)
 Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*
03/01/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 14, 2019. On August 11, 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 on September 1, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing. With his Answer, he provided one exhibit, which I have marked as Applicant's Exhibit (AE) A.

On November 5, 2021, Department Counsel submitted the Government's file of relevant material (FORM) including Items 1-5. A complete copy of the 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 responded to the FORM on December 22, 2021. The case was assigned to me on February 9, 2022.

Item 1 is comprised of the SOR and Applicant's Answer, which are the pleadings in the case. Item 2 is his 2019 SCA. Item 3 is a summary of Applicant's interview, dated September 17, 2019. Items 4 and 5 are credit reports, dated September 5, 2019, and

November 1, 2021, respectively. In his FORM Response, Applicant objected to Item 3, because it is unauthenticated by a Government witness. This objection is supported by DOD Directive 5220.6, ¶ E.3.1.20. Therefore, Item 3 is not admitted into evidence, and I have not considered it. Items 2, 4, and 5 are admitted into evidence without objection. Applicant's FORM Response and AE A are also admitted without objection.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e – 1.l, 1.n, and 1.o. Applicant denied SOR ¶¶ 1.c, 1.d, and 1.m. He also provided brief narrative explanations for some of the SOR allegations, and a longer narrative statement about his financial problems. In his FORM Response, Applicant provided an additional narrative statement addressing Department Counsel's arguments. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 64 years old. He has been employed by a defense contractor since 2009. His work during this timeframe has been in a combat zone. He was employed as a government employee from 2000 – 2006. He served on active duty in the U.S. military from 1975 until he retired in 1998. He has no reported periods of unemployment. He last applied for a security clearance in 2009. He earned an associate's degree in 1984. He has been married since 2015, and has a daughter age 37. (Item 2)

The SOR alleges 15 delinquent debts, totaling approximately \$83,000. Twelve of the debts are charged off, and three are in a collection. The allegations are established by Applicant's admissions, and the 2019 and 2021 credit reports. Applicant did not provide any documentation of the current status of the SOR debts. (Items 1, 2, 4, 5) The status of the debts follows:

SOR ¶ 1.a is an auto loan that was charged off in the amount of \$11,840. The account was opened in 2015, with a date of last activity in August 2019. Applicant states that he was a cosigner on the loan for his step son. After a "falling out" with his mother, the step son left the car with Applicant, who then turned it in to the lender before he returned to work overseas. (Items 1, 4, 5)

SOR ¶ 1.b is a credit card that was charged off in the amount of \$4,411. The account was opened in 2015, and the date of last activity was in January 2018. (Items 1, 4)

SOR ¶¶ 1.c and 1.d are medical accounts in collection for \$121 and \$107. Applicant claims these debts were paid, but did not provide any supporting documentation. The debts are noted on his 2019 credit report, but the creditors are not identified. (Items 1, 4)

SOR ¶ 1.e is a loan that was charged off in the amount of \$3,782. The account was opened in 2017, and the date of last activity was in August 2019. Applicant claimed

that he was working with the credit holder to make payments, but did not provide any supporting documentation. (Items 1, 4)

SOR ¶ 1.f is an insurance account that was placed for collection in the amount of \$276. In his Answer, Applicant claimed that he would pay the debt in the next 30 days, but did not provide any supporting documentation that it had been paid. (Items 1, 4)

SOR ¶ 1.g is a credit card that was charged off in the amount of \$1,564. The account was opened in 2012, and the date of last activity was August 2019. (Items 4, 5)

SOR ¶ 1.h is a credit card that was charged off in the amount of \$2,095. The account was opened in 2014, and the date of last activity was December 2016. (Item 4)

SOR ¶ 1.i is a credit card that was charged off in the amount of \$1,521. The account was opened in 2014, and the date of last activity was February 2017. (Item 4)

SOR ¶ 1.j is a credit card that was charged off in the amount of \$6,742. The account was opened in 2015, and the date of last activity was January 2017. (Item 4)

SOR ¶ 1.k is a credit card that was charged off in the amount of \$2,384. The account was opened in 2016, and the date of last activity was February 2017. (Item 4)

SOR ¶ 1.l is a credit card that was charged off in the amount of \$19,806. The account was opened in 2008, and the date of last activity was August 2019. In his Answer, Applicant claimed that this is the next big item that he will work on as soon as he can make arrangements with the current credit holder. He did not provide any supporting documentation to show that he took any subsequent action. (Items 1, 4, 5)

SOR ¶ 1.m is an auto loan that was charged off in the amount of \$16,115. The account was opened in 2016, and the date of last activity was September 2019. Applicant claimed the full amount has been paid off, but did not provide any supporting documentation. (Items 1, 4)

SOR ¶ 1.n is a credit card that was charged off in the amount of \$3,455. The account was opened in 2015, and the date of last activity was March 2017. (Item 4)

SOR ¶ 1.o is a car that was repossessed, and the loan was charged off in the amount of \$8,924. The account was opened in 2015, and the date of last activity was July 2018. Applicant stated in his Answer that he turned the car into the lender because he was deploying to work overseas. He provided no subsequent information of his efforts to address the remaining balance owed. (Items 1, 4)

Applicant asserted in his Answer and his FORM Response that his financial difficulties were caused by circumstances beyond his control. In 2017, his wife started treatment for a medical condition, which was not covered by insurance. In June 2018, his salary was reduced by \$25,000 when his contract was assumed by a new employer. He also lost \$30,000 in income in 2020 due to the pandemic. (Item 1, FORM Response)

Applicant also asserts that his finances were significantly impacted during this period due to erroneous reports to the credit bureaus and to his bank, that he was deceased. He asserts that this occurred both in mid-2017 and again in 2018. Applicant said he was not aware of this at the time. The situation impacted his finances when his military retirement pay and VA disability pay were stopped in 2018, for about four months. His creditors also demanded full payment. He stated that he did not have the money to pay them in full, and they went unpaid while he figured out what to do next. (Item 1, FORM Response)

Applicant claims he called several debt relief services, and was advised to address his debts one at a time. He stated that once he confirms the identity of each creditor, he plans to address his debts in this manner. He cited his payment of SOR ¶ 1.m, as an example, but this payment is not documented. Applicant provided no documentation of payments made towards any of his SOR debts, any payment agreements established, or formal relationships with any debt relief service. (Items 1, 4)

Applicant stated that his financial problems were an isolated incident. He argued that his debts were not excessive, and but for his loss of income he could have paid his creditors. He claims that these financial problems haven't happened before or since, and that he made a choice to pay his wife's medical treatments over his bills. He states that during his many years of government service, he has never considered betraying his country. He argues that his financial situation was beyond his control, and that his debt has been dealt with or is being dealt with. He asserts that the credit reports being used by the government are from 2017 and 2018, when his accounts were frozen. (Item 1, FORM Response)

While some of Applicant's debts became delinquent after mid-2018, a review of credit reports in the record indicate that the date of last activity for several SOR debts (SOR ¶¶ 1.h, 1.i, 1.j, 1.k, and 1.n, for instance) are from early 2017 – before Applicant's initial drop in income and before the first erroneous reports of his death. (Items 4, 5)

A review of Applicant's credit reports list only two accounts referencing Applicant as deceased (Items 4, 5, listing SOR ¶ 1.n and the creditor for SOR 1.o, but a different account). Applicant also provided a one-page credit statement from zumper.com indicating that he did not have a credit score because he was deceased. (Items 4, 5, AE A)

Applicant did not provide any documentation showing that any of his debts have been paid, are being paid, or have been disputed. He also failed to provide documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He provided no evidence of credit counseling.

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;

The SOR debts are established by the credit reports in the record, and Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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 asserted that his debts were caused or exacerbated by a variety of circumstances beyond his control, but he gave little to no indication that any of his debts have been paid, resolved, or are being actively addressed in a responsible way. He also provided no documentation of any payments made, agreements established, or debts settled, and no documentation of his current ability to do so.

Applicant's medical debts are small and do not appear to be part of the larger pattern of delinquent consumer debt. The creditors for these debts are not specifically identified in the credit reports, and Applicant is not able to research them. I find the medical debts do not represent a security concern. SOR ¶¶ 1.c and 1.d are resolved in Applicant's favor.

Applicant did not provide sufficient evidence to establish that AG ¶ 20(a) should apply. He did not provide any documentation that any of his debts have been, or are being paid, or otherwise resolved. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His debts are ongoing, recent, and not isolated, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant is given consideration under AG ¶ 20(b). His wife's medical issues, some of which were not covered by insurance, had some impact on his finances. He also experienced two instances of decreased income, both due to circumstances beyond his control. However, the record shows that he started defaulting on his debts in early 2017, before the first erroneous reports of his death, and before his instances of lost income. The record shows that his debts are unresolved and ongoing, and he did not provide sufficient evidence to show that he undertook responsible action to address them. Therefore, AG ¶ 20(b) does not fully apply.

Similarly, Applicant did not provide sufficient evidence that he has undertaken good-faith efforts to address his debts. He gave little indication that any of his debts have been or are being paid, and provided no documentation of any payments towards them. AG ¶¶ 20(d) does not apply.

AG ¶¶ 20(c) does not fully apply. Applicant indicated in his Answer and his FORM Response that he consulted credit counselors, and indicated that he has begun to act on their advice by confirming his creditors' identity and paying off his debts one at a time. He provided insufficient documentary evidence of any payments made on his debts, or that his finances are under control or being resolved.

AG ¶¶ 20(e) potentially applies only to debts Applicant has denied. Medical debts ¶¶ 1.c and 1.d, as noted, are found in his favor because they are not sufficiently identified. Applicant did not, however, provide sufficient documented information to dispute SOR ¶ 1.m., a repossessed auto account. He admitted the remaining debts,

and did not provide sufficient evidence to establish that the erroneous reports of his death impacted the legitimacy of his delinquencies.

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 Applicant's military and government service, and his work in a combat zone. 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.

There is insufficient evidence to conclude that Applicant's financial problems were largely caused by circumstances beyond his control, and will not recur. There is insufficient reason to believe that these debts will be resolved within a reasonable period. Some of Applicant's debts have been charged off for over five years. He did not make reasonable efforts to resolve them. His financial issues are recent and ongoing. I am unable to find that he acted responsibly under the circumstances, or that he made a good-faith effort to pay his debts

Applicant did not request a hearing, I did not have the opportunity to question him about his financial issues, or to assess his credibility by observing his demeanor. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's delinquent debts under Guideline F. My decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

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.b: | Against Applicant |
| Subparagraphs 1.c - 1.d: | For Applicant |
| Subparagraphs 1.e – 1.o: | 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.

Ross D. Hyams
Administrative Judge