



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



In the matter of:)
)
) ISCR Case No. 20-00918
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2022

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 July 28, 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.

In an undated answer to the SOR, Applicant 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 24, 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 1 through 6. 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 denied all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. He received an associate's degree in 2018. He was married from 2009 to 2011 and in 2012. He married for the third time in 2015. He has two adult stepchildren. (Item 2)

In Applicant's October 2018 security clearance application (SCA), he stated in response to his employment activities that "I have accepted an offer of employment with [federal contractor], awaiting clearance needed." He noted the dates as October 2018 to present. He stated the same thing for employment activities from October 2017 to October 2018, and noted he was unemployed with a job offer and awaiting a clearance. He worked from February 2017 to October 2017; unemployed December 2015 to February 2017, and was employed from June 2005 to December 2015. He left this job to go to college. He attended college from May 2015 to May 2018. In Applicant's answer to the SOR he indicated he was currently employed. The dates of his employment are unknown. (Item 2)

The SOR alleges four delinquent debts. In December 2018, Applicant was interviewed by a government investigator. He was confronted with the debt alleged in SOR ¶ 1.d (\$28,862), which he acknowledged. The account was opened during his first marriage. Applicant assumed payments on a trailer from the owners. He stopped making the payments after his wife left. He did not recall the amount of the delinquency. He told the investigator that he made payments of \$50 and one of the payments was returned so he assumed the matter was settled. In Applicant's response to the SOR, he said that he attempted to contact the creditor, but was unable to locate the creditor. He also said that the debt is over 10 years old and therefore the statute of limitations has run. (Items 2,6)

During Applicant's background interview Applicant acknowledged the delinquent debts alleged in SOR ¶¶ 1.b (\$747) and 1.c (\$114). He said he did not know that he owed money on the accounts. He was going to research them and intended on resolving them in 2019. Regarding the debt in SOR ¶ 1.a (\$908), he told the investigator that he did not know what the debt was for or if it belonged to him, but he would contact the government investigator later to confirm the information. (item 6)

In January 2019, Applicant was interviewed again by the government investigator. He said the debts in SOR ¶¶ 1.b and 1.c became delinquent because he did not have the money to pay them. He anticipated resolving the debts by the end of 2019. He said the

debt in SOR ¶ 1.a was a personal loan. He said he neglected to pay the loan because he did not have the money. (Item 6)

Applicant's December 2018 credit report reflects the accounts alleged in SOR ¶¶ 1.a, 1.b. and 1.c as charged off. The account in SOR ¶ 1.d is listed as a voluntary surrender with a delinquent balance owed of \$28,862. Applicant's November 2021 credit report does not reflect the alleged debts. (Items 3, 4, 5)

In response to Government interrogatories from January 2020, Applicant stated that he attempted to resolve the SOR debts, but received no response from his inquires and that the debts no longer appear on his credit report. (Item 3)

In Applicant's answer to the SOR he denied the debts in SOR ¶¶ 1.a, 1.b and 1.c and stated that he was unable to confirm their status with the creditor and the three accounts "are nearly 10 years old and therefore exceed the statute of limitations." (Item 2)

Applicant further stated in his SOR answer that he has turned his life around. He settled multiple outstanding debts, including five credit card debts, student loans, and a debt for television services. He said he completed years of college and obtained a security certificate that allowed him to obtain better job opportunities, which has allowed him to live within his means. He is trusted with sensitive information and maintains a clean lifestyle.

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 four delinquent debts that began accumulating more than ten years ago that he was 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 persons 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 acknowledged to the government investigator in 2018, all of the debts alleged in the SOR. He indicated he was unable to pay the debts in SOR ¶¶ 1.a, 1.b and 1.c because he did not have the money. Regarding the debt in SOR ¶ 1.d he said he made \$50 payments, one was returned, so he assumed the debt was resolved. His lack of initiative to contact the creditor to verify the status of the debt is irresponsible. Applicant provided no documentary evidence to show he has done anything to resolve his delinquent debts. He says he made inquiries about the accounts, but received no response. A delay in dealing with one's delinquent debts whereby the accounts are more

than ten years old and creditors no longer maintain records does not mitigate the financial considerations security concerns. There is no evidence of financial counseling or a good-faith effort to pay the creditors or resolve the debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant stated he did not have the money to pay the debts. He had periods of unemployment, which may have been beyond his control, but he offered no evidence that he took meaningful action to resolve the debts. AG 20(b) has minimal application. Applicant's failure to address his delinquent debts for 10 years does not create a mitigation windfall. Under the circumstances, I cannot find that his behavior occurred under unique circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(b) 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.

The Appeal Board provides a summary regarding "non-collectable" debts:

The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitations, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an

applicant's judgment, reliability, and trustworthiness in making a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner." ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018) quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan 19, 2011)

Applicant's reliance on the statute of limitations to mitigate the security concerns raised by his delinquent debts is misguided. Insufficient evidence was provided, and 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

 Subparagraphs 1.a-1.d: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge