



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



In the matter of:)
)
) ISCR Case No. 19-03857
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 19, 2019. On April 10, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD issued the SOR under Executive Order 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 13, 2021, and elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA) on the administrative (written) record, in lieu of a hearing. On October 28, 2021, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 9. DOHA mailed the FORM to Applicant the same day, and he received it on December 8, 2021. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and on January 11, 2022, the case was forwarded to the DOHA hearing office for assignment to an administrative judge for a decision on the written record. The case was assigned to me on February 8, 2021. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 8 are admitted into evidence without objection.

Findings of Fact

In his answer to the SOR, Applicant admitted each allegation (SOR ¶¶ 1.a through 1.m) without comment. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He earned an associate's degree in 2002. He was married from 1990 to 2009, and has two adult children from his first marriage. He has been married to his second wife since 2012. (Item 2).

Applicant worked for a medical devices company from May 2008 to October 2009, when he was laid off. He was then unemployed for about a year. He then worked for a manufacturing company for just over two years, from October 2010 to January 2013. He then had a job for about two months before he left due to a notice of unsatisfactory performance. Between 2013 and 2019, he held several jobs in the technical field, and was laid off in February 2019. He was unemployed for about two months before starting his current position, as an inspector with a large defense contractor, in April 2019. (Item 2 at 12-20)

On his SCA, Applicant referenced financial difficulties and noted that he sends \$150 to a debt relief company every two weeks to pay down his accounts. (Item 2 at 39-41) Applicant discussed numerous specific debts during his background interview. (Item 3 at 2-3)

The SOR debts are established by Applicant's admissions in his answer to the SOR (Item 1), by credit reports from May 2019 and November 2019 (Items 4, 5), public records of two state tax liens (Item 6), and bankruptcy filings in 1990 (Item 7) and 2010 (Items 8, 9).

Applicant indicated in his June 2019 background interview that he fell behind on his debts after he was laid off in February 2019. However, he also indicated that he retained a debt relief company in November 2018, which was a few months before he was laid off from that job. He indicated that he enrolled about \$18,000 of debts into that plan, which required him to pay \$300 a month for 48 months, from November 2018

through November 2022. (Item 3 at 3) Applicant did not provide any documentation with his SOR response or during his background interview to corroborate these payments, or any others. (Item 2, Item 3 at 4)

The delinquent debts alleged in the SOR total almost \$36,000. In his answer to the SOR, Applicant admitted each allegation but provided no additional information (beyond the earlier references to the debt relief program previously noted) concerning the status of his debts and whether they have been, or are being, paid or otherwise resolved. The debts are detailed as follows:

SOR ¶ 1.a (\$10,879) is a charged-off account. (Items 4, 5) Applicant acknowledged the debt in his background interview. (Item 3)

SOR ¶ 1.b concerns a repossessed automobile. The amount alleged in the SOR (\$10,221) is the balance owed after the repossession. \$814 was reported as past due on the November 2019 credit report. A line item on that report indicated that it was “affected by natural disaster.” (Item 5) Applicant did not appear to address this debt in his interview, so there are no other details provided. (Item 3)

SOR ¶¶ 1.c (\$2,156) and 1.d (\$1,816) are charged-off debts to the same bank. (Item 5) Applicant acknowledged the debts in his background interview. (Item 3)

SOR ¶ 1.e (\$1,540) is a debt placed for collection. SOR ¶ 1.f (\$740) is another debt in collection, owed to the same collection agency. A bank is the original creditor. (Items 4, 5)

SOR ¶ 1.g (\$415) is a charged-off debt. (Item 4, 5) Applicant indicated in his interview that the debt was for food purchases. (Item 3)

SOR ¶ 1.h (\$88) is a charged-off debt to a cable company. (Items 4, 5) Applicant admitted the debt in his answer to the SOR, but indicated in his interview that he no longer owed the debt and did not intend to pay it. (Item 3)

SOR ¶ 1.i (\$591) is a debt placed for collection. (Item 4) Applicant indicated in his interview that he did not recognize the debt, but he admitted it in his answer. (Items 1, 3)

SOR ¶¶ 1.j (\$5,816) and 1.k (\$1,633) are two outstanding state tax liens, both entered against Applicant in 2012, in a state where he used to live. (Item 6) According to his SCA, he moved to a new state in 2013, and has lived there since then. (Item 2 at 10) Applicant discussed these state tax liens in his background interview. They appear to date from tax year 2009, when Applicant was audited and could not document certain deductions. He said he had been on a payment plan from 2009 to 2018 but had to stop making payments due to other bills. (Item 3) Applicant admitted the two tax liens in his answer to the SOR and provided no additional information.

Applicant has experienced previous financial difficulties. He filed for Chapter 7 bankruptcy protection in 1990, and received a discharge. (Item 7) (SOR ¶ 1.m) He filed for Chapter 13 bankruptcy in October 2010. The bankruptcy was converted to Chapter 7 in May 2012, and was discharged a few months later. (SOR ¶ 1.l) (Items 3, 8, 9)

Applicant admitted each of the SOR allegations without comment. He provided no documentation about any efforts to pay or resolve any of his debts, either through the debt relief program or otherwise. He provided no information about his current financial stability. He also did not respond to the FORM, so the only information about his financial situation is taken from his background interview.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred numerous recent delinquencies and has filed for bankruptcy twice before. AG ¶¶ 19(a) and 19(c) apply.

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, or 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.

In his answer, Applicant admitted all of the allegations in the SOR. He provided no additional explanation beyond what he previously indicated in his interview about either the origin of his debts, or what he is doing about them, to consider in mitigation. Nor did he provide any documentation of either his efforts to resolve his debts, or about the current state of his finances. Applicant did not provide sufficient information to apply any of the mitigating conditions in full.

AG ¶ 20(a) does not apply. Applicant's debts are ongoing, and continue to cast doubt on his judgment, trustworthiness, and reliability.

Applicant has some unemployment in his past, including brief unemployment in late 2019, which he asserted impacted his finances and led him to pursue resolving his debts with a debt relief company. Applicant is given some credit under AG ¶ 20(b), as some of his current debts may well stem from that job loss. However, he did not provide sufficient information to establish that he has taken reasonable action under the circumstances. AG ¶ 20(b) does not fully apply.

Applicant retained a debt relief service to assist him with his creditors, and indicated in his SCA and in his June 2019 background interview that he was paying them \$300 a month. He gave no later indication that he had continued this practice, documented or otherwise, nor that his arrangement with that company had a positive impact on his more recent finances. He did not establish that the company was a "legitimate and credible source" of financial counseling of the sort contemplated by AG ¶ 20(c), nor did he establish that his debts are being resolved or are under control. AG ¶ 20(c) does not apply. Similarly, he did not establish that he has undertaken good-faith efforts to repay his creditors or otherwise resolve his debts. AG ¶ 20(d) does 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(a), 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 Guidelines F in my whole-person analysis. Applicant did not provide sufficient evidence to mitigate the security concern shown by his delinquent debts and his history of financial difficulties. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For these reasons, I conclude Applicant did not provide sufficient information to mitigate the security concerns about his finances under Guideline F.

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.m:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge