



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



In the matter of:)
)
-----) ISCR Case No. 21-02016
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence to mitigate the national security concerns arising from his problematic financial history. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his latest security clearance application (SCA) on January 21, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on October 13, 2021, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on November 20, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On December 30, 2021, Department Counsel

submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 10. Applicant was sent the FORM on January 12, 2022, and he received the FORM on January 19, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 10 are admitted without objection. The case was assigned to me on March 23, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old, divorced and remarried. He has three children by his former wife, ages 20, 17, and 14, who live with his former wife. Applicant has three stepchildren, ages 18, 16, and 15, who live with him and his current wife. He was awarded an associate's degree in December 2005. Applicant served on active duty in the Air Force from April 2000 until he retired in May 2020 with an honorable discharge.

The SOR alleged eight delinquent debts that total \$20,963 and one foreclosed mortgage in 2014. Applicant admitted the allegations. More specifically, he answered that two debts will be paid (SOR ¶¶ 1.b. and 1.c.) and one debt (SOR ¶ 1.d.) has been paid. Applicant attributes the other debts to his separation and divorce from his first wife (SOR ¶¶ 1.a. and 1.e. – 1.i.). He did not produce any documents supporting his responses. (Answer.) Applicant did aver that the foreclosure (SOR ¶1.i.) had no balance due to the mortgagee. The Government's evidence supports that assertion. (Item 8.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court 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 Guideline F 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. . . .

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).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) history of not meeting financial obligations.

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

Guideline F 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; and
- (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.

Applicant's delinquencies occurred recently and persist to this day. I cannot find that AG ¶ 20(a) applies. The next inquiry is whether AG ¶ 20(b) applies.

Marital separations and divorces, especially where children are involved, are fertile fields where financial problems can grow. It is not unreasonable, therefore, for Applicant to claim that his separation and divorce caused the financial problems that he confronts today. Separation and divorce are conditions expressly recognized by AG ¶ 20(b) as being "largely beyond [a] person's control." The inquiry, however, does not end there. Faced with the financial adversity that separation and divorce cause, Applicant needs to show that he acted responsibly under those circumstances. He has not done so here. In addition, Applicant has not produced any documents to support his claims that SOR debts have been or will be paid. The Appeal Board has stated that it is reasonable for a Judge to expect applicants to present documentation showing that debts have been resolved or are being resolved. See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). AG ¶ 20(b) does not apply.

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant has not mitigated the security concerns arising 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
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Subparagraphs 1.a.- 1.i.:	Against Applicant
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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.

Philip J. Katauskas
Administrative Judge