



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



In the matter of:)	
)	
)	ISCR Case No. 22-00166
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 11, 2022, 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 February 24, 2022, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 21, 2022, and reassigned to me on April 11, 2022.

The hearing was convened as scheduled on April 12, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE P through Z, which are admitted without objection. AE P is an email and AE R though Z are the attachments to the email. The attachments were premarked, so I did not remark them. There are no exhibits marked AE O or AE P.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor, where he has worked since February 2022. He served on active duty in the U.S. military from 2013 until he was discharged with a general under honorable conditions discharge in 2015. He is attending college. He married in 2012 and has been separated since 2015. He has no children. (Tr. at 10, 19-21, 24, 46-48, 50; GE 1)

Applicant has a history of financial problems going back to his time in the military. He reported on his May 2021 Questionnaire for National Security Positions (SF 86) that he “[h]ad financial issues and asked to be chaptered out in order to fix them.” Conduct issues also factored in the discharge. (Tr. at 14-15, 24-25; GE 1-3)

The SOR alleges six delinquent debts totaling about \$23,800. The debts include a loan for the purchase of a dog (SOR ¶ 1.a - \$5,292), a loan for college (SOR ¶ 1.b - \$2,328), a delinquent phone bill (SOR ¶ 1.c - \$2,287), a credit account for home furnishings (SOR ¶ 1.e - \$3,213), and the deficiency balances owed on two auto loans after the vehicles were repossessed and sold (SOR ¶¶ 1.d - \$7,182 and 1.f - \$3,499). (Tr. at 36-44; Applicant’s response to SOR; GE 1-3) Applicant admitted owing all of the debts in the SOR, with the comment:

I admit that I made very poor financial and budgeting errors when I was younger which resulted in several accounts becoming delinquent. I know now that I am older that it was wrong and irresponsible. Over the past few years I have paid off several accounts to work on fixing my credit. I will seek financial advice from professionals and do what I need to do to pay off these final few remaining accounts as soon as possible. I can provide my credit report to show that I have been actively working on resolving accounts as well as my current budget and financial plan to finish paying off all remaining debts. (Applicant’s response to SOR)

Applicant had a vehicle repossessed in about 2014. The \$7,182 charged-off debt alleged in SOR ¶ 1.d represents the deficiency balance owed on the loan after the vehicle was sold. (Tr. at 42-43; Applicant’s response to SOR; GE 2, 3)

Applicant bought and financed a luxury vehicle (M1) in about 2017. While he still owned and was paying for that vehicle, he bought a truck in November 2018 that was financed with an auto loan of about \$27,689. He explained that where he lived, most people owned trucks. He kept M1 for his sister to use to go to work and school. In about December 2019, he traded in the truck for the purchase of another luxury vehicle (M2) that was two years old. He owed about \$21,000 on the loan for the truck, but the dealer gave him \$28,000 for the truck. The remainder of the purchase price of M2 was financed with a loan of about \$32,700. M1 was voluntarily repossessed in about October 2020. To clarify a somewhat confusing situation, Applicant owned and had auto loans for a luxury vehicle (M1) and a truck at the same time, and he then owned and had loans for two luxury vehicles (M1 and M2) at the same time. One of the luxury vehicles (M1) was voluntarily repossessed. The \$3,499 charged-off debt alleged in SOR

¶ 1.f represents the deficiency balance owed on the loan after M1 was sold. (Tr. at 29-32, 54-55)

Applicant stated that he lost track of the SOR debts because they did not appear on the credit reports he obtained. He was reminded of the debts through the security clearance process. In March 2022, he made arrangements to pay \$40 per month toward the debts alleged in SOR ¶¶ 1.b to 1.f. The holder of the SOR ¶ 1.a debt informed him that the debt was transferred to a collection company. He was unable to contact the collection company, and the Better Business Bureau reported the company as out of business. He stated that he did not start paying the SOR debts sooner because of the expenses of relocating to a new area for his current job. He documented \$40 payments in March 2022 toward the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e. He documented \$40 payments in April 2022 toward the debts alleged in SOR ¶¶ 1.b to 1.f. (Tr. at 16-17, 32-34, 38-45; Applicant's response to SOR; AE A-H, K, M, N, R-W)

Applicant paid delinquent debts that were not alleged in the SOR. The June 2021 and March 2022 credit reports indicate that he paid or settled debts of \$877, \$1,375, \$169, and \$1,409. He also paid several debts that may not have been delinquent when they were paid. He estimated that he paid debts totaling "10,000 to \$15,000, at least." He has a \$41,246 student loan that is in deferment. He received financial counseling, and he has a budget. He stated that he wants to put his mistakes behind him and make better financial decisions. He asserted that he has the ability to pay his creditors, and he plans to continue to do so. (Tr. at 15, 18-19, 22, 25-29, 33-36, 45; GE 2, 3; AE I, J, L, P, X-Z)

Applicant called a witness who testified that since he started working for their company in February 2022, he has been "an exemplary employee, he's hard working, he's on time." (Tr. at 49-50)

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.

Applicant has a history of financial problems, including defaulted auto loans, repossessed vehicles, and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted owing all of the debts alleged in the SOR. He stated that he "made very poor financial and budgeting errors when [he] was younger." His finances were at least partially responsible for his discharge from the military. Some of Applicant's questionable decisions were made recently. Having already had a vehicle repossessed, and while having multiple delinquent debts, Applicant took out loans for a luxury vehicle and a truck at the same time, and then had loans for two luxury vehicles at the same time. He allowed one of the luxury vehicles to be voluntarily repossessed in October 2020.

Applicant is credited with paying several debts that were not alleged in the SOR, including debts of \$877, \$1,375, \$169, and \$1,409. However, he only started paying the SOR debts in March 2022, documenting eight \$40 payments, or \$320. I would like to think that he will continue paying his debts, but his history of questionable financial decisions causes me to have doubts that he will do so.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.f:	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.

Edward W. Loughran
Administrative Judge