



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



In the matter of:)
)
) ISCR Case No. 20-00655
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 29, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on March 29, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2022.

The hearing was convened as scheduled on April 27, 2021. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A through D, which were admitted without objection.

Findings of Fact

Applicant is a 54-year-old former employee of a defense contractor, where he worked from 2018 until he was laid off in September 2021. The company continues to sponsor him, and he will be rehired if he receives a security clearance. He served on active duty in the U.S. military or in the military reserve from 1989 until he retired with an honorable discharge in 2008. He has about 90 college credits. He is married with three adult children. (Transcript (Tr.) at 16-17, 20-21; GE 1)

Applicant served in war zones while on active duty. He has a 100% disability rating from the U.S. Department of Veterans Affairs (VA) for posttraumatic stress disorder (PTSD), bipolar disorder, and a heart condition. He receives about \$3,915 per month in disability pay. He stated that he is now on medication and “doing great.” (Tr. at 19-22, 24)

Applicant has a history of financial problems, which he attributed to his PTSD, bipolar disorder, and periods of unemployment and underemployment after leaving the military. (Tr. at 18, 28-29, 39; GE 1-5) The SOR alleges nine delinquent debts totaling about \$20,900. The debts consist of \$6,265 and \$4,377 owed on two military exchange charged-off credit cards; three medical debts totaling \$4,839; a charged-off auto loan of \$5,043; and three miscellaneous delinquent debts ranging from \$27 to \$259 for a total of \$375. Applicant admitted that he owed all of the debts at one time, but he stated that at least two of the debts were paid.

Applicant stated that he stopped paying the two military exchange credit cards (SOR ¶¶ 1.a and 1.c) in about 2009. That is consistent with what is listed on the July 2018 combined credit report. He entered into a payment agreement for the two accounts in April 2021. He agreed to pay \$3,700 in May 2021, followed by 22 monthly payments of \$500. He made a \$3,700 payment in May 2021, and \$500 payments in June, July, and August 2021. He stopped making the payments when he was laid off in September 2021. (Tr. at 22; Applicant’s response to SOR; GE 2-6; AE A, B)

SOR ¶ 1.b alleges a \$5,045 charged-off auto loan. The July 2018 combined credit report lists it as a joint account opened in 2012. Applicant stated that he cosigned the loan for his son who was supposed to make the payments, but failed to do so. It is unclear when the vehicle was repossessed, but Applicant stated that he thought it was in about 2016 or 2017. The summary of Applicant’s background interview indicates that Applicant told the investigator that his son totaled the car in an accident. The June 2019 Equifax credit report lists the account as opened in April 2012, with a date of last action (DLA) of January 2014. The debt is not listed on the March 2021 Equifax credit report, likely because it “aged off” the report because it was past the seven-year reporting window. (Tr. at 18, 24-25; Applicant’s response to SOR; GE 2-6)

Applicant financed another vehicle in about November 2015. He stopped paying the loan, with the last payment made in about June 2016.¹ It is unclear when it was voluntarily repossessed, but Applicant stated that he thought it was in late 2017. The creditor charged off \$8,599 and transferred the account to a collection company. For whatever reason, this account was not listed on July 2018 combined credit report or the June 2019 Equifax credit report, but it is listed on the March 2021 and April 2022 Equifax credit reports. (Tr. at 29-30; GE 2-6)

Applicant paid the \$89 telecommunications debt (SOR ¶ 1.f) on March 30, 2021. His assertion that he paid the \$27 public utility debt (SOR ¶ 1.e) is accepted. He denied ever having insurance with the carrier for the \$259 insurance debt (SOR ¶ 1.g). He stated that he contacted the carrier, and they could not locate the debt. This debt was listed on July 2018 combined credit report, but not the three more recent reports. (Tr. at 17, 27-28; Applicant's response to SOR; GE 2-6; AE A, D)

Applicant had many medical bills. He stated during his background interview in March 2019 that the \$1,944 medical debt (SOR ¶ 1.h) was for a medevac helicopter. He stated that he was paying \$410 per month until the debt was paid off. Two of the medical debts (SOR ¶¶ 1.h and 1.i) are listed on the July 2018 combined credit report. One medical debt (SOR ¶ 1.d) was listed on the June 2019 Equifax credit report. None of the medical debts are listed on the March 2021 or April 2022 Equifax credit reports. (Tr. at 26; Applicant's response to SOR; GE 2-6)

Applicant stated that his finances are better, and that he was able to buy a home in March 2021. Payments on the SOR debts are on hold due to the current job lay off. He asserted that he will return to paying his debts after he is rehired. He has not received financial counseling. (Tr. at 19, 30-32; Applicant's response to SOR; GE 2-6)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2018. He failed to report his financial problems under any question, including questions that asked if in the last seven years, he had any possessions or property voluntarily or involuntarily repossessed (this section not alleged); if he defaulted on any type of loan (not alleged); if had bills or debts turned over to a collection company; if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; if he had been over 120 days delinquent on any debt; and if he was currently over 120 delinquent on any debt. (GE 1)

Applicant was interviewed for his background investigation in March 2019. He discussed the debts from the July 2018 credit report. The second repossessed vehicle was not listed on that report, and there is no indication that Applicant ever brought it to the investigator's attention. (GE 2)

Applicant denied intentionally providing false information on the SF 86. He stated that he knew that he had two repossessed vehicles and he owed debts, but he was

¹ This debt was not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

unsure why he answered the way he did. He stated that the information that he provided was to the best of his knowledge, but it could have been related to his PTSD and bipolar disorder. (Tr. at 19, 32; Applicant's response to SOR)

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 E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally providing false information on the SF 86. He stated that he knew that he had two repossessed vehicles and he owed debts, but he was unsure why he answered the way he did. He stated that the information that he provided was to the best of his knowledge, but it could have been related to his PTSD and bipolar disorder.

The two military exchange credit cards may have become delinquent outside the seven-year window of the questions. There is some question as to whether Applicant knew that he had the three medical debts and the three small miscellaneous debts. I am unable to find that Applicant intentionally falsified the SF 86 by failing to report any of these debts.

Applicant was aware that he or his cosigner son stopped paying the two auto loans and both vehicles were repossessed within the seven-year window. Having considered all of the evidence, including Applicant’s age, education, experience, medical conditions, and testimony, I find that he intentionally provided false testimony on the SF 86 when he failed to report that he defaulted on the two auto loans; that he had two vehicles voluntarily or involuntarily repossessed; that he had been over 120 days delinquent on the two vehicle loans; and that he was currently over 120 delinquent on the two vehicle loans.

The SOR did not allege the question about repossessions. It also did not allege anything about the second defaulted auto loan and repossession, likely because it was unknown to the DOD until the 2021 credit report. Because those questions were not alleged, Applicant's intentional failure to report them cannot be used to establish a disqualifying condition. It was alleged that Applicant intentionally failed to report that he had been over 120 days delinquent on the first auto loan, and that he was currently over 120 delinquent on that loan. AG ¶ 16(a) is applicable to those questions.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant discussed the debts from the July 2018 credit report during his background investigation in March 2019, but there is no indication that he ever brought the second repossessed vehicle to the investigator's attention. Additionally, Applicant denied that he lied on the SF 86. Having determined that he intentionally omitted information about his finances in an attempt to mislead the government, I have also determined that his explanations that the omissions were unintentional were also false. It would be inconsistent to find his conduct mitigated.²

² See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security

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's financial history, which includes multiple delinquent debts, is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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

clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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 attributed his financial problems to his PTSD, bipolar disorder, and periods of unemployment and underemployment after leaving the military. He paid the \$89 telecommunications debt on March 30, 2021, the day after he received the SOR. His assertions that he paid the \$27 public utility debt and disputed the \$259 insurance debt are accepted. Those debts and the medical debts are mitigated.

Applicant entered into a payment agreement for the two military exchange credit cards in April 2021, after he received the SOR. He is credited with paying \$5,200 toward those debts. He stopped making the \$500 payments when he was laid off. He did nothing to pay the two auto loans. The facts that he only started paying the debts after he received the SOR and never discussed the second auto loan until specifically asked about it at the hearing, leave me with doubts that he would have paid his debts if not for his security clearance. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. ISCR Case No. 17-03229 at 6 (App. Bd. Jun. 7, 2019).

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 the security concerns arising out of Applicant's delinquent debts are not mitigated.

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 Guidelines E and F in my whole-person analysis. I also considered years of honorable military service, including his deployments to war zones.

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 personal conduct and 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.c:	Against Applicant
Subparagraphs 1.d-1.i:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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