



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



In the matter of:)	
)	
)	ISCR Case No. 21-00172
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 1, 2020. On March 20, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on April 30, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On November 19, 2021, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1-6. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 3, 2022. He responded on January 31, 2022 with a narrative statement. (FORM Response) He did not submit any documents along with his Response. However, he included a collections excerpt from Equifax and TransUnion in

the narrative. It is admitted as Applicant's Exhibit (AE) A. The case was assigned to me on March 17, 2022.

Items 1 and 2 are the SOR and Applicant's Answer, which are the pleadings in the case. Item 3 is his 2020 SCA. Item 4 is a summary of his October 2020 interview with a government investigator. Items 5 and 6 are his February 2021 and September 2020 credit reports, respectively. Items 3 – 6 are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a – 1.h, and 1.k, and denied SOR ¶¶ 1.i – 1.j, all without explanations. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 57 years old. He has been employed as an airplane mechanic by a defense contractor since 2020. This is his first application for a security clearance. He graduated high school in 1982. He has been married since 1984, and has one adult daughter, and two adult step-children. (Item 3)

Applicant has had several periods of unemployment. He was laid off from his job of ten years in December 2017, and was then unemployed until June 2018. He became reemployed for about seven months, but left that job in January 2019 because there was not enough work for him, and he had a long commute. He obtained a new job in March 2019 for about eight months, but lost it due to budget cuts. He was unemployed from November 2019 to August 2020, before obtaining his current job. He asserts that these periods of unemployment caused him financial distress. (Items 2, 3, 4)

In his background interview, Applicant stated that when his bills became delinquent, he worked with his creditors to continue making payments. However, he did not provide specific information about how he worked with his creditors, or documentation of these efforts. He stated that despite working with them, some creditors sent his accounts to collection. (Item 4)

In his FORM Response, Applicant stated that he began paying off creditors as he could. He claimed that he has done very well in satisfying most of his debts, and will continue to pay them until they are all settled. He did not provide any substantiating documentation of his payments or resolution of specific debts. With his Response, he included two screen shots from his phone, purporting to show summaries of collection accounts from two credit reporting agencies. They appear to be from a phone app and not from a credit report. The summaries provide no detail other than the creditor name and debt amount. (Response; AE A)

The Equifax summary Applicant provided with his FORM Response shows that he has three collections totaling \$3,937. The debts in SOR ¶¶ 1.c and 1.k are listed, as well as one debt for \$58 that is not on the SOR. The TransUnion summary shows that he has four collections totaling \$6,105. SOR ¶¶ 1.c and 1.k are listed, and two debts for

\$1,792 and \$434 that are not on the SOR. Applicant asserts that the debts listed in the summaries are the only ones that he has left to resolve, however he provided no evidence of resolution of the other accounts. (Response; AE A)

The SOR alleges eleven delinquent debts, totaling approximately \$75,000. Five of these debts are charged off, five are in collection status, and one is three years' delinquent. The allegations are established by Applicant's admissions and the 2020 and 2021 credit reports. Applicant did not provide documentation to show the current status of the SOR debts. (Items 2-6; Response) The status of the debts follows:

SOR ¶¶ 1.a and 1.b are medical accounts in collection for \$202, and \$58, respectively. (Items 4, 5, 6)

SOR ¶ 1.c is a debt in collection in the amount of \$2,693. He stated in his background interview that he was unsure what this account was related to, but did not dispute it. He admitted the debt in his Answer, and it remains delinquent on the collections summaries he provided with his FORM Response. (Items 4, 5, 6; AE A)

SOR ¶ 1.d is a debt in collection for jewelry in the amount of \$257. (Items 4, 5, 6)

SOR ¶ 1.e is a personal loan that was charged off in the amount of \$5,754. (Items 4, 5, 6)

SOR ¶ 1.f is a debt that was charged off in the amount of \$12,183. In his background interview, Applicant said that he was unsure of the origin of this debt, but that he would research it. (Items 4, 5, 6)

SOR ¶ 1.g is a debt that was charged off in the amount of \$2,701. It was opened in September 2016, and became delinquent in November 2016. He stated in his background interview that he was unsure what this account was related to, but did not dispute it. (Items 4, 5, 6)

SOR ¶ 1.h is an auto loan that was charged off in the amount of \$1,172. It was opened in 2011 and Applicant's last payment was in January 2016. He reported that he was unable to keep up payments on the car and surrendered it to the creditor. He stated that he intends to pay this debt. (Items 3-6)

SOR ¶ 1.i is a mortgage account that is three years' delinquent in the amount of \$48,119, with a total balance of \$204,959. It was opened in 2012, and last paid in April 2019. Applicant stated in his background interview that the loan was in forbearance and that he was trying to defer payments until the end of 2020, while his financial situation stabilized. Applicant denies this debt in his Answer, but provided no documentation showing the current status of the loan. (Items 4, 5, 6)

SOR ¶ 1.j is a personal loan that was charged off in the amount of \$941. It was opened in October 2016, and became delinquent in November 2016. Applicant denies

this debt in his Answer, but provided no documentation showing the current status of the loan. (Items 4, 5, 6)

SOR ¶ 1.k is a personal loan in collection in the amount of \$1,186. It was opened recently, in December 2019, and that last activity on the account was in September 2020. It also remains delinquent on the collections summaries he provided with his FORM Response. (Items 4, 5, 6; AE A)

Applicant did not provide any documents showing that any of his debts have been or are being paid, disputed, or otherwise resolved. He also submitted no documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He provided no evidence of credit counseling.

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.

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;

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

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; and

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

Applicant's medical debts are small and do not appear to be part of the larger pattern of delinquent consumer debt. The creditor for SOR ¶ 1.b is not specifically identified in the credit reports, so he is not able to research it. I find the medical debts do not represent a security concern. SOR ¶¶ 1.a and 1.b are resolved in Applicant's favor.

Applicant did not provide sufficient evidence to establish that AG ¶ 20(a) should apply. He did not provide any documentation that any of his debts have been or are being paid, or otherwise resolved. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His debts are recent, not isolated, and are ongoing and unresolved, indeed, he has other, unalleged debts as well. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant is given some consideration under AG ¶ 20(b). His loss of employment starting in December 2017 and his sporadic subsequent employment, had an impact on his finances. However, the record shows that three of his debts became delinquent in 2016 before he became unemployed, and one debt became delinquent after he started his current job. There is insufficient evidence to show that he has rehabilitated his mortgage, which is three years' delinquent. The record shows that his debts are largely unresolved, and he did not provide sufficient evidence to show that he undertook responsible action to address them. AG ¶ 20(b) does not fully apply.

Similarly, Applicant did not provide sufficient evidence that he has undertaken good-faith efforts to address his debts. The two collections summaries that he provided in his Response do not prove that he has paid the debts alleged in the SOR. Furthermore, the information he provided shows that there are three new collections that didn't appear on his 2020 and 2021 credit reports. Looking at both his Answer and

Response, he failed to provide sufficient evidence that any of his debts have been or are being paid, and he provided no documentation of any payments towards them. 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 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 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's delinquent debts under Guideline F. My decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

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.b:	For Applicant
Subparagraphs 1.c - 1.k:	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.

Ross D. Hyams
Administrative Judge