



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



In the matter of:)
)
) ISCR Case No. 21-01451
)
Applicant for Security Clearance)

Appearances

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

06/16/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On October 25, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 15, 2022 and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 25, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6 (Item 1 is the SOR). Applicant did not submit a response to the FORM or file objections to any evidence offered. All Items are admitted into evidence. The case was assigned to me on May 5, 2022.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.b, 1.j and denied 1.c through 1.i. Applicant's admissions are included in 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 58 years old. He attended college, but did not earn a degree. He served in the Air Force Reserve from 1986 to 1995 and was honorably discharged. He married in 1995 and divorced in 2016. He has two grown children. He has been employed by his present employer, a federal contractor, since April 2020. He was unemployed and on disability from June 2015 to April 2020. Before then he was employed by a federal contractor from January 2011 to June 2015. (Item 3)

In Applicant's February 2021 security clearance application (SCA), he disclosed three delinquent debts. Applicant attributed his financial problems to his unemployment due to his health and his wife passing away in 2016. He stated to the government investigator during his March 2021 interview that he was laid off from a position in 2015 and was supported by a severance package and his wife's disability until she passed away in May 2016. He received Social Security disability in November 2016. Applicant was taking care of his son and looking for work. He was self-employed as an Uber driver from August 2015 to December 2015. At some point, Applicant's health became an issue and he had a kidney transplant. The details and timeframe were not provided. He told the investigator that now that his health was better, his finances were improving. However, he did not intend to repay his debts for repossessed vehicles because they were over five years old. (Items 3, 4)

During Applicant's background interview by a government investigator, he acknowledged owing the debt in SOR ¶ 1.j (\$18,636) for a vehicle he purchased in August 2015 that was later repossessed in December 2015. He told the investigator that the debt should be charged off and he does not plan on paying it because he returned the vehicle over five years ago. This debt is unresolved. (Item 4 pages 7-10)

In Applicant's July 2021 response to interrogatories, he stated: "Working on a plan to have the medical collections paid off[f] in a month (end of Aug 2021)." Medical debts are alleged in SOR ¶¶ 1.c (\$482), 1.d (\$459), 1.g (\$67), and 1.h (\$63). He subsequently denied these debts in the SOR answer stating they had either been paid in full or removed from his credit report. No supporting documents were provided. They are unresolved. (Item 2, Item 4 pages 3, 7-10, Item 5)

Applicant acknowledged to the investigator that he owed the debt in SOR ¶ 1.i (\$7,195), which was for a personal loan he obtained in 2013 or 2014. He was unable to

pay it when he lost his job. He told the investigator that he planned on contacting the creditor and negotiating a settlement agreement and pay it as soon as he could. In his SOR answer he denied the debt stating that it either had been paid in full or had been removed from his credit report. He did not provide any documents to support his claim. The debt is unresolved. (Item 2, Item 4 pages 7-10)

Applicant acknowledged to the investigator that he owed the debt alleged in SOR ¶ 1.e (collection account for utility bill-\$431) for an electric bill that he could not pay when he lost his job in 2015. He intended to pay the bill as soon as possible. In his SOR answer, he denied the debt stating that it either had been paid in full or had been removed from his credit report. He did not provide any documents to support his claim. The debt is unresolved. (Item 2, Item 4 pages 7-10)

Applicant admitted the debt in SOR ¶ 1.a (\$11,795) and acknowledged it to the investigator. He explained to the investigator that the amount was alleged by a former landlord for damages and because Applicant had not removed all of his property from the premises. Applicant disputed the debt and told the investigator that he intended to take the landlord to court. Applicant did not provide any evidence as to his actions to resolve or dispute the debt. It remains unresolved. (Item 2, Item 4 pages 7-10)

Applicant admitted the debt in SOR ¶ 1.b (\$1,412). He explained to the investigator that the debt was incurred in 2015 after he lost his job and was sick. He was now employed and intended to pay this debt as soon as possible. He did not provide evidence that the debt was paid or resolved. (Item 2, Item 4)

Applicant stated that he arranged a settlement agreement with the creditor for the debt in SOR ¶ 1.f (\$78). The supporting documents show that an agreement was reached and Applicant paid \$701 towards the original amount of \$779. It appears the remaining balance alleged in SOR 1.f was the amount the creditor agreed to forgive. In Applicant's interrogatory response, he stated that he had followed up with the creditor for the debt and was told his credit report would be updated regarding it. I find in Applicant's favor on this allegation. (Item 2, Item 4 at 3-10, 13-17, Item 6)

Applicant's admissions in the SOR, interrogatory responses, and background interview, a credit report from March 2021, and a state document verifying a judgment corroborate the SOR allegations. (Items 2, 3, 4, 5, 6)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that began accumulating in about 2014. He was unable to pay them for a period. Some debts, despite his admissions that they belong to him, he does not intend to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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 acknowledged to the government investigator and in his SOR answer that he owed the debts alleged in the SOR. He does not intend to pay the repossessed vehicle debts because of their age. He indicated that other debts were either paid or no longer on his credit report. He failed to provide corroborating evidence to either. Applicant's delinquent debts are numerous and unpaid. His failure to address the debts cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant did not provide a timeline for his medical conditions. The loss of his wife's income and her passing were beyond his control. His medical issues were beyond his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. Applicant stated to the government investigator and in his interrogatories his intention to pay his medical bills and address his other delinquent debts, but he did not intend to pay the large debts for the repossessed vehicles. Later, he indicated that certain debts were either paid or removed from his credit report. He failed to provide corroboration for either. After Applicant was working and able to address his delinquent debts he chose not to. He failed to act responsibly. AG ¶ 20(b) does not apply.

There is no evidence Applicant is participating in credit counseling. AG ¶ 20(c) does not apply. He resolved the debt in SOR ¶ 1.f. AG ¶ 20(d) applies to it. There is insufficient evidence to apply it to his other debts. Applicant disputes the debt in SOR ¶ 1.a, but failed to provide documented proof to substantiate any action he has taken. AG ¶ 20(e) 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(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.

The Appeal Board provides a summary regarding "non-collectable" debts:

The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitations, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness in making a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner." ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018) quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan 19, 2011)

Applicant's reliance that debts may have fallen off his credit report to mitigate the security concerns raised by his delinquent debts is misguided. Insufficient evidence was provided, and he failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised 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

Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge