



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 21-01998 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2022

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 September 30, 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.

On December 3, 2021, Applicant answered the SOR, and he 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 January 16, 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 April 12, 2022.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated into 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 40 years old. He earned an associate degree in 2012 and a bachelor's degree in 2014. He married in 2018 and has two children ages 11 and 2. He has been employed as a federal contractor since 2009 and with his current employer since 2019. He lists no periods of unemployment on his security clearance application (SCA). (Item 1)

The SOR alleges five delinquent debts totaling approximately \$113,378. Applicant attributed his financial issues to an unsuccessful real estate investment he made in 2016. He used personal loans and credit cards to make the down payment and for repairs on the property he purchased. By 2018 he was unable to make payments on the accounts and they went into collection. The accounts are alleged in SOR ¶¶ 1.b (\$24,093), 1.c (\$18,544), 1.d (\$9,807), and 1.e (\$27,209). In Applicant's answer to the SOR, he states for each debt that he has been in contact with the financial institution associated with the debt to resolve it and is working on a payment plan. He further stated:

I am working on repairing all of this and I have a tangible plan that can get this debt resolved within the next 2 years. I am a part-time real estate agent and I have been investing in single family rental properties. I plan to use the money I can earn in selling real estate and by refinancing the homes I have purchased to pay off the debts mentioned in the Statement of Reasons. (Item 2)

Regarding the debt in SOR ¶ 1.a, Applicant stated that this debt is an outstanding car loan. He sub-leased the car to someone and that person stopped making the car payments and let the insurance lapse. He is unable to locate the person and the car. In his September 2020 background interview with a government investigator, he stated that he has been in contact with the creditor. In his answer to the SOR he said he was in touch with the creditor to resolve the debt and is working on a payment plan. (Items 2, 4)

The debts in the SOR are corroborated by Applicant's admissions in his answer to the SOR, his statements to the government investigator, and credit reports from July 2020 and May 2021. (Items 2, 3, 4, 5)

Applicant did not provide any documentary evidence that he was participating in payment plans, making payments, or had reached settlement agreements with any of the creditors.

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; and

- (c) a history of not meeting financial obligations.

Applicant has five delinquent debts that began accumulating in 2016 that total approximately \$113,378 that he is unable 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; and

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

Applicant admitted he owes all of the debts in SOR. He invested in real estate in 2016, used personal loans and credit cards to finance the transaction and then was unable to make the payments on the accounts. He did not provide information as to what changed and impacted his ability to pay his accounts. He indicated that he is working on payment plans with the creditors, but did provide any corroborating evidence. It appears his plan to resolve his debts is based on his ability to make sales in the real estate market, refinance some property, and use the equity to pay his debts. He did not provide any evidence of anything tangible he has done towards that plan. It is unknown how many single family properties Applicant owns. At this point, his plan is speculative.

Applicant's delinquent debts remain unpaid and there is insufficient evidence that future issues are unlikely to recur. Applicant chose to be involved in a financial endeavor that involves risk. He has not provided evidence that he is resolving his delinquent debts. There is no evidence he has participated in financial counseling or that he has made a good-faith effort to repay his creditors. None of the above mitigating conditions apply to SOR ¶¶ 1.b through 1.e.

The debt in SOR ¶ 1.a is for a defaulted car loan. He subleased the car to someone who then failed to make the payments. This was a risky transaction, but was marginally beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He has not provided evidence that he has a payment plan or settlement agreement with the creditor. AG ¶ 20(b) has minimal application.

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.

Applicant 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.e: | 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