



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



In the matter of:)
)
) ISCR Case No. 19-02906
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2022

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 November 27, 2019, 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 3, 2020, and requested a hearing before an administrative judge. Scheduling of the case was delayed by the COVID-19 pandemic. The case was assigned to me on April 4, 2022.

The hearing was convened as scheduled on May 19, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibit (AE) A, which was admitted without objection.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor, where he has worked since January 2019. He served in the National Guard from 2007 to 2010. He attended college off and on since 2007 without earning a degree, and he is currently enrolled in college. He has never married, but he has lived with his girlfriend for about eight years, and they share two young children. (Tr. at 16-19, 37-38; Applicant's response to SOR; GE 1, 2)

The SOR alleges eight delinquent debts. The debts consist of balances due on two auto loans after the vehicles were repossessed (SOR ¶¶ 1.a - \$10,953 and 1.e - \$8,591); a defaulted student loan (SOR ¶ 1.b - \$7,142); two medical debts totaling about \$165 (SOR ¶¶ 1.d and 1.f); two debts owed to apartment landlords (SOR ¶¶ 1.c - \$613 and 1.g - \$1,912); and \$841 owed to a telecommunications company (SOR ¶ 1.h). Unless specifically stated otherwise below, the debts are established by credit reports and Applicant's admissions.

Applicant attributed his financial problems to moving cross country for his job. He also had periods of unemployment and underemployment. (Tr. at 16; GE 1, 2)

The creditor for the \$10,953 auto loan (SOR ¶ 1.a) agreed to reduce the amount owed to \$5,000, but Applicant did not pay it. The debt "aged" off his most recent credit report as beyond the seven-year reporting window. He believes the creditor is satisfied because his current auto loan is with the same financial institution. (Tr. at 20-23; Applicant's response to SOR; GE 2-5; AE A)

Applicant asserted that he settled the \$8,591 deficiency balance on the auto loan for a repossessed vehicle (SOR ¶ 1.e) for "\$500 something," and that he paid the settlement amount in 2019. He stated the amount was paid with a prepaid debit card from an account he no longer has. The debt is listed by TransUnion and Equifax on the September 2018 combined credit report with a last action date of December 2014. The debt is not listed on the Equifax credit reports from 2019, 2020, and 2022. (Tr. at 25-27; Applicant's response to SOR; GE 2-5; AE A)

Applicant owes \$31,431 for five federal student loans. He is attending college, so all of the loans, including the defaulted loan alleged in the SOR, are currently deferred. Four of the loans were taken out within the last two years. He stated that he was on a \$5 per month loan rehabilitation program in 2019. The 2022 credit report indicates that Applicant made four payments in 2020 before the COVID-19 pause and he returned to school. It also shows that he made payments in January and February 2022. (Tr. at 16, 23-24; Applicant's response to SOR; GE 2-5; AE A)

Applicant cosigned an apartment lease for a friend. The friend moved out of the apartment with a balance of \$613 due (SOR ¶ 1.c). The friend did not pay, leaving Applicant responsible. Applicant has not paid the account, but he stated that his friend told him that she paid the debt. The debt is listed on the 2018 and 2019 credit reports, showing an activity date of January 2013. The debt is not listed on the 2020 and 2022

credit reports. There is no direct evidence that the debt was paid. (Tr. at 24-25; Applicant's response to SOR; GE 2-5; AE A)

SOR ¶ 1.g alleges a \$1,912 debt owed to an apartment landlord. Applicant admitted he owed the debt. He wrote in his response to the SOR that he was "currently in works to satisfy debt." No payments have been made. He stated that he disputed the amount of the debt. The debt is listed by Experian on the September 2018 combined credit report with an activity date of August 2018. The debt is not listed on any of the later Equifax credit reports. (Tr. at 28-29; Applicant's response to SOR; GE 2-5; AE A)

Applicant stated that he paid the two medical debts totaling about \$165 (SOR ¶¶ 1.d and 1.f). The debts are not listed on any credit report after 2019. (Tr. at 17, 25; Applicant's response to SOR; GE 2-5; AE A)

Applicant denied owing the \$841 debt to a telecommunications company (SOR ¶ 1.h). He stated that a family member stole his identity to open a cable television account without his permission. The debt is listed by Equifax and Experian on the September 2018 combined credit report with the annotation: "Account disputed by consumer." The activity date is August 2015. The debt is not listed on the Equifax credit reports from 2019, 2020, and 2022. (Tr. at 29-30; Applicant's response to SOR; GE 2-5; AE A)

Applicant has taken financial counseling courses. He stated that his finances have greatly improved since the start of his background investigation, but took "a little hit" because of the COVID-19 pandemic. His girlfriend lost her job because of the pandemic, and she has been out of work for about a year. (Tr. at 17-20, 34-37, 40-41)

With the exception of the deferred student loan, none of the SOR debts are listed on the April 2022 Equifax credit report submitted by Applicant. However, that report listed two new past-due debts and two new charged-off debts. A credit card was \$48 past due with a balance of \$822, with the last payment in February 2022. An unsecured installment account was \$360 past due with a balance of \$4,850, with the last payment in January 2022. An unsecured installment account was charged off for \$4,274, with the last payment in February 2021. An unsecured installment account was charged off for \$2,873, with the last payment in November 2020.¹ (Tr. at 30-33; AE A)

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.

¹ These debts were not alleged in the SOR and cannot be used for disqualification purposes. They may be considered when assessing Applicant's overall financial condition, in the application of mitigating conditions, and during the whole-person analysis.

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's financial history, which includes multiple delinquent debts, is sufficient to raise the above 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 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 moving cross country for his job. He also had periods of unemployment and underemployment. Additionally, his girlfriend lost her job because of the pandemic, and she has been out of work for about a year.

Applicant made assertions about resolving certain debts without providing documentation. I have accepted those assertions where the debt is no longer listed by the credit reporting agency that originally reported it, and it would otherwise be expected to still be on a credit report because seven years had not passed. I am crediting Applicant with paying, settling, disputing or otherwise resolving the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.h. Those debts are mitigated.

Applicant stated that his friend told him that she paid the debt for the cosigned apartment lease. The debt is not listed on the 2020 and 2022 credit reports, but that is not unexpected because of the seven-year reporting window. There is no direct evidence that the debt was paid. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

Applicant has made some strides in resolving the SOR debts. However, he has taken some steps backward. The April 2022 credit report submitted by Applicant listed two new past-due debts and two new charged-off debts.

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 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. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For 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