



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



In the matter of:)
)
) ISCR Case No. 19-03393
)
Applicant for Security Clearance)

Appearances

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

07/14/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On January 23, 2020, 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 July 29, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on April 22, 2022.

The hearing was convened as scheduled on June 13, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. As Applicant had not yet reviewed it, GE 6 was admitted without objection for a limited purpose. Applicant provided no documents to offer in evidence at hearing. At Applicant's request, I left the record open until June 27, 2022, for Applicant to provide documents to support his case, and for him to review GE 6. On June 14, 2022, as he had reviewed GE 6 and had no objection, GE 6 was fully admitted in evidence. The e-mail evidencing Applicant acknowledging his review of GE 6 and waiving his objection to its entry is marked as

Hearing Exhibit (HE) 1. On June 27, 2022, at Applicant's request, I extended the deadline for providing post-hearing documents until July 5, 2022. On June 28, 2022, he provided post-hearing documents consisting of 12 pages that were admitted in evidence without objection as Applicant's Exhibit (AE) A. The e-mail admitting AE A in evidence is marked as HE 2.

Findings of Fact

Applicant is a 38-year-old employee of a government contractor. He has worked for his current employer since about January 2018. He attended high school from 1998 until 2002 but did not earn a diploma. In 2016, he received a certificate in aviation mechanics. He also attended classes full time at two other trade schools between 2014 and 2017, but did not earn a certificate or degree. He served on active duty with the U.S. Air Force for about 10 years until 2013 when he received a general discharge under honorable conditions. He received this discharge because he was charged with driving under the influence of alcohol in February 2013. He was twice deployed to combat zones during his military service. He was married in 2008 and divorced in 2013. He has been living with a cohabitant since 2016 and has been engaged to marry her as of late 2021. He has five children with three different women. At least four of his children are minors for whom he is financially responsible. He was unemployed from about 2013 until January 2018. He briefly held one temporary job for about four months in 2015. He claimed that he was looking for work throughout this period of unemployment. (Transcript (Tr.) 25-30, 50-51, 56-57, 59; GE 1, 2)

The SOR alleges that Applicant has seven delinquent debts totaling approximately \$91,000. These delinquencies consist of child support payments (SOR ¶¶ 1.a and 1.b), an automobile loan (SOR ¶ 1.c), a government overpayment (SOR ¶ 1.d), and telecommunications debts (SOR ¶¶ 1.e, 1.f, and 1.g). Approximately \$69,000 of the delinquent debt in the SOR is for unpaid child support in State A and State B. Applicant admitted the SOR debts in SOR ¶¶ 1.a and 1.b and 1.e through 1.g, with additional comment. He denied the SOR debts in SOR ¶¶ 1.c and 1.d. His admissions are adopted as findings of fact. (Tr. 30-46, 50-61; Applicant's response to SOR; GE 1-6; AE A)

The child support debts to State A and State B alleged in SOR ¶¶ 1.a and 1.b have been resolved. Applicant testified that he brought these accounts current through payments and by taking custody of the two children for whom the payments were provided after his ex-wife passed away in April 2021. Both State A and State B forgave any back child support owed in 2021 when Applicant took sole custody of the two children. Applicant provided documentary evidence from States A and B that these accounts are current. He first fell behind on these payments because he was unable to find employment after he left the military. However, he began repaying the debts once he started his current job in January 2018. (Tr. 30-39, 50, 57-59, 61; Applicant's response to SOR; GE 1-6; AE A)

The \$20,068 charged-off automobile loan listed in SOR ¶ 1.c has not been resolved. The creditor charged off this debt in July 2013. The debt became delinquent

because Applicant received a demotion in rank in 2013 and lost a significant portion of his salary. He believed his ex-wife was responsible for this loan. He testified that she took the car after their divorce, but in his 2018 clearance interview, he stated that he was in possession of the vehicle that secured the debt when it was repossessed. He did not initially try to make payment arrangement on this debt because he believed his ex-wife was responsible for it. After learning that he was responsible for the debt, in 2016 or 2017, he claimed that he contacted the creditor but he could not afford to make the payments they were requiring, so he gave up. He presented no documentary evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant actions to resolve this debt. The debt appears on the 2017 and 2019 credit reports but not on the 2021 and 2022 credit reports. (Tr. 39-41; Applicant's response to SOR; GE 2, 3, 4)

The \$536 government overpayment debt listed in SOR ¶ 1.d has not been resolved. During his clearance interview, Applicant stated that he was unaware of this debt. He stated in his response to the SOR that he was unaware of the debt and denied it because the government had not properly communicated to let him know he owed it. He initially testified at his hearing that he was unaware of this debt. However, he subsequently testified that this debt was likely for an overpayment for moving expenses while he was still in the military. He claimed that he contacted his former military base several times in 2013 after he became aware of the debt to resolve it, but no one could help him with a resolution, so he stopped trying. Given that he took these efforts to resolve the debt in 2013, he must have been aware of it during his clearance interview, when he responded to the SOR, and at hearing. Regardless, he presented no documentary evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant actions to resolve this debt. The debt appears on the 2017 and 2019 credit reports, but not on the 2021 and 2022 credit reports. The latest activity date listed on the 2017 and 2019 credit reports is 2014. (Tr. 41-43; Applicant's response to SOR; GE 2-4)

The \$222 and \$133 telecommunications debts alleged in SOR ¶¶ 1.e and 1.f, respectively, have not been resolved. Applicant fell behind on these debts because he was not earning enough money to pay them and prioritized other expenses. He claimed that he paid the debt listed in SOR ¶ 1.e and he believed his fiancée paid the debt listed in SOR ¶ 1.f. He did not provide documentation to corroborate that he or his fiancée paid these debts. The debt in SOR ¶ 1.e appears on the 2017 and 2019 credit reports but not on the 2021 or 2022 credit reports. The 2017 and 2019 credit reports reflect a 2012 activity date for the debt listed in SOR ¶ 1.e. The debt in SOR ¶ 1.f appears on the 2019 and 2021 credit reports, but not on the 2022 credit report. The 2019 credit report reflects a 2018 activity date for the debt listed in SOR ¶ 1.f. The 2021 credit report does not list an activity date. (Tr. 43-45, 59-60; Applicant's response to SOR; GE 2-5)

The \$649 telecommunications debt alleged in SOR ¶ 1.g has not been resolved. Applicant became delinquent on this debt when he moved from State A to State B and did not return the creditor's equipment. He claimed that he arranged for the creditor to forgive his debt by using the same equipment when he set up another account with the same creditor in State B. He did not provide any documentation to corroborate the

existence of this agreement with the creditor or the resolution of this debt. This debt appears on the 2017 credit report with an action date of 2013, but it does not appear on the 2019, 2021, or 2022 credit reports. (Tr. 45-47, Applicant's response to SOR; GE 2, 3)

Applicant had two additional delinquent debts not listed in the SOR that appeared on the 2022 credit report.¹ These delinquencies were rental debts for \$1,631 and \$5,201, respectively. Applicant claimed that he paid these debts. He provided corroborating documentation that he paid the first of these rental debts in May 2022 and the other in June 2022. (Tr. 16-20, 23-24; GE 5, 6; AE A)

With the exception of the four months that he held a temporary job in 2015, Applicant earned approximately \$1,200 per month through the G.I. Bill while attending school from 2014 through 2018. He currently earns approximately \$5,700 in gross income per month. His fiancée was recently laid off, is looking for another job, and is in the process of applying for unemployment benefits. Applicant testified that he was able to make payments on his debts because of the income she was providing prior to being laid off. He has no savings account, but testified that he has "about five grand just sitting around." He claimed that he earns enough money to save each month and that he and his fiancée follow a written budget. He has not received any financial counseling. (Tr.47-49, 56-57; GE 2)

Applicant presented two character-reference letters. One was from a co-worker and the other from a long-time friend. The friend holds a security clearance and works for a U.S. Senator as a military/veteran liaison. Both of these individuals think Applicant should be entrusted with a security clearance and cite to how well he takes care of his children and his understanding of the importance of family. They also attest to Applicant's strong work ethic and his ability to rebound from the difficult situation involving his ex-wife and her untimely passing. (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.

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.

¹ Any adverse information not alleged in the SOR, such as Applicant's two additional delinquent debts cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

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 had several delinquent debts that went unresolved for many years. Several of these debts remain unresolved. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;
- (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 a difficult divorce in 2013 and unemployment from 2013 until 2018. These causes were beyond his control.

There is documentary corroboration that the child support debts alleged in SOR ¶¶ 1.a and 1.b have been resolved through payment and Applicant taking custody of two of his two children. SOR ¶¶ 1.a and 1.b are concluded for Applicant, as AG ¶ 20(b) and AG ¶ 20(d) apply.

None of the other SOR debts are mitigated. Applicant claimed that he does not think he owes the debts in SOR ¶¶ 1.e through 1.h because he thinks he either paid these debts or came to an alternative agreement with the creditor without payment. However, he provided no documentary proof of payment or this alternative agreement. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016).

Applicant denied owing the SOR debts in SOR ¶¶ 1.c and 1.d. He thought his ex-wife was responsible for the debt in SOR ¶ 1.c, but he provided no documented proof to substantiate this basis of dispute or evidence of his actions to resolve the debt. He claimed that the government had not properly communicated to him that he was responsible for the debt in SOR ¶ 1.d, but admitted at hearing that he knew about the debt in 2013, tried to resolve it for a couple of months, but then gave up. Therefore, his basis for disputing this debt is not supported by the evidence and is not reasonable.

Several of Applicant's debts appear on earlier credit reports, but not subsequent ones. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Additionally, as there is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, the absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate a history of financial difficulties or constitute evidence of financial reform or rehabilitation. ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

While Applicant ultimately settled these debts just prior to the hearing, he became delinquent on two additional debts after the SOR was issued. These new delinquencies, combined with his unresolved SOR debts show that his financial issues are ongoing. These delinquencies also fail to show that his financial issues are unlikely to recur. Applicant's failure to provide adequate proof that he has resolved the majority of his SOR debts and his additional delinquencies show that his financial issues are ongoing and continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concern is 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. I have also considered Applicant's positive character references, his military service, and his deployments.

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 concern.

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 |
| Subparagraph 1.c-1.g: | 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.

Benjamin R. Dorsey
Administrative Judge