



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



In the matter of:)
)
) ISCR Case No. 19-03455
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

07/08/2022

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 February 6, 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 March 18, 2020, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 24, 2022, and reassigned to me on April 20, 2022.

The hearing was convened as scheduled on April 21, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection. The hearing was held open for Applicant to submit additional documentary evidence. He submitted documents that I have marked AE L through P and admitted without objection.

Findings of Fact

Applicant is a 70-year-old vice president of a company doing business as a defense contractor, a position he has held since May 2018. He has a master's degree that he earned in 1974. He is also a 1977 law school graduate and an attorney. He has been a member of the U.S. Coast Guard Auxiliary since 2001. He is married with an adult child. (Tr. at 6, 13; Applicant's response to SOR; GE 1; AE E-K)

The SOR alleges six delinquent debts totaling about \$49,300. The debts consist of three consumer accounts totaling about \$23,533 (SOR ¶¶ 1.a, 1.b, and 1.c); two medical debts totaling \$200 (SOR ¶¶ 1.d and 1.e); and a defaulted \$25,573 student loan (SOR ¶ 1.f). All of the debts are listed on a May 2019 credit report.

Applicant worked at a law firm from 2010 to 2018. The law firm paid bonuses, which was often the largest part of the compensation, once a year. This left the partners and employees struggling for the rest of the year. His compensation also decreased about \$20,000 to \$25,000 at one point. He left the law firm to take his current job. He is also an adjunct professor at two law schools and a college. (GE 1, 2; Applicant's response to SOR; AE K)

Applicant and his wife were primarily responsible for their elderly parents. His father passed away in about 2008, and his father-in-law passed away in 2011. Applicant and his wife also traveled extensively to the state where his mother lived, before he moved his mother to be closer to him in 2012. Applicant had a financial plan for his mother through 95, but she outlived his plan, resulting in out-of-pocket expenses. She passed away at 102 in 2018. There were also expenses related to traveling to care for his mother-in-law. She passed away in 2017. Applicant and his wife also paid for their child to go to college from 2008 to 2012. (Tr. at 14-15; Applicant's response to SOR; GE 2; AE K)

Applicant stated that he was making regular payments to the bank for the \$4,781 charged-off debt alleged in SOR ¶ 1.a until 2014, when the creditor stopped sending monthly statements. His wife handles the family's finances. He stated that she unsuccessfully attempted to contact the creditor to arrange payments. The debt is listed by all three credit reporting agencies on the May 2019 combined credit report with an activity date of May 2019. The debt is not listed on the June 2022 Experian credit report submitted by Applicant. (Tr. at 44-48; Applicant's response to SOR; GE 2, 3; AE L)

SOR ¶ 1.b alleges a \$16,742 airline miles charged-off credit card. Applicant stated that, like the previous debt, the creditor stopped sending monthly statements. He wrote in his response to the SOR: "my wife and I were fully prepared to pay off this obligation, but in the last several years have never received any bill, communication or other response, including to whom and to where payments should be made". The debt is listed by all three credit reporting agencies on the May 2019 combined credit report with an activity date of March 2015. The debt is not listed on the June 2022 Experian credit report. (Tr. at 48-50; Applicant's response to SOR; GE 2, 3; AE L)

Applicant admitted owing the debt alleged in SOR ¶ 1.c, but he stated the amount owed was \$1,882 and not \$2,010. He reported the debt on a Questionnaire for National Security Positions (SF 86) he submitted in January 2019, with the comment: “paying off the obligation at \$69.11/month.” He told an investigator during his June 2019 interview that he believed the account had been satisfied. He repeated that claim during a telephonic follow-up interview in July 2019. (Tr. at 50-53; Applicant’s response to SOR; GE 1, 2)

Applicant testified that the debt was sold to a collection company in 2019. He was offered the option of paying \$77 per month for 24 months. He made one payment in September 2019, but he “never received any subsequent payment coupons or other written communication from [collection company], despite [his] attempts to continue payments.” He stated that the collection company occasionally contacts them by telephone, insisting on payments through a credit or debit card, or online by providing access information for their checking account. He “refused to do either out of security concerns.” His position is: “if they want their money, they can jolly well send us any of that and we’ll gladly reinstitute payments.” The letter from the collection company has an 800 number and a website that accepts payments. The debt is not listed on the June 2022 Experian credit report. (Tr. at 50-53; Applicant’s response to SOR; GE 1-3; AE L)

Applicant denied owing the two medical debts totaling \$200 (SOR ¶¶ 1.d and 1.e). The debts are not identified and do not appear on the 2022 credit report. (Tr. at 5; Applicant’s response to SOR; GE 2, 3; AE L)

SOR ¶ 1.f alleges a defaulted \$25,573 student loan that was taken out for Applicant’s child’s education. Applicant stated that the loan was consistently and timely paid “until the lender suddenly and without notice charged it off.” The debt is listed by all three credit reporting agencies on the May 2019 combined credit report with an activity date of February 2015. The bank holding the loan issued an Internal Revenue Service (IRS) Form 1099-C (Cancellation of Debt) in 2019, which cancelled Applicant’s \$13,885 debt. Applicant asserted that they were paying the loan, as evidenced by the \$13,885 figure as opposed to \$25,573. However, creditors are not obligated to include interest, and if they do, it is required to be reported.¹ The 1099-C did not report any interest. (Tr. at 57-63; Applicant’s response to SOR; GE 2, 3; AE L)

Applicant and his wife have received financial counseling. She handles the family’s finances. He believes she keeps an informal budget. She works ten hours a week. In addition to his salary, he receives Social Security benefits and the pay for being an adjunct professor at two law schools and a college. He recently refinanced the mortgage for the house he has lived in since 1997. None of the SOR debts are listed on the June 2022 Experian credit report submitted by Applicant. Except for the SOR debts, his finances are in order. He has \$86,321 in federal student loans that are on pause due to relief granted for the COVID-19 pandemic. The original amount borrowed was \$48,594, so a fair amount of the balance is interest. Applicant stated that with his

¹ See <https://www.irs.gov/instructions/i1099ac>.

refinanced mortgage, he is willing and able to pay the student loans when the pause is ended. (Tr. at 63-75; AE A-D, K-O)

The Chairman and Chief Executive Officer of Applicant's employer has known him professionally and personally for about 26 years. He attested to Applicant's excellent job performance and strong moral character. He recommended Applicant for a security clearance. (Tr. at 17-41)

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.

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

Applicant has a history of delinquent debts and financial problems. The evidence indicates that it was initially difficult for him to pay his debts, but he could pay the debts at some point, he just chose not to. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

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's financial problems related primarily to caring for his parents and his parents-in-law and compensation issues at his previous employer. However, those issues ended more than four years ago. Whatever minimal security concerns raised by the two small unidentified medical debts are mitigated. As for the other SOR debts, Applicant is credited with paying a total of \$77. I do not believe that multiple creditors simply stopped making efforts to receive his payments. Applicant is not necessarily lying, as almost all of the information about his finances was relayed to him by his wife. In any regard, he is ultimately responsible for his finances, and he abrogated his responsibility to pay his creditors. The facts that one of the creditors cancelled its debt and none of the debts are listed on the most recent credit report provide little mitigation. See, e.g., ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 15, 2015).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

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 also considered Applicant's commendable service in the Coast Guard Auxiliary and his favorable character evidence.

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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	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.

Edward W. Loughran
Administrative Judge