



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



In the matter of:)	
)	
)	ISCR Case No. 21-01921
)	
Applicant for Security Clearance)	

Appearances

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

07/05/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his charged-off and delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 28, 2020. On September 20, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on February 3, 2022, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On March 1, 2022, Department Counsel submitted the Government's file of relevant material (FORM) including Items 1-6. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on March 24, 2022. A response was due on April 23, 2022, but none was received. The case was assigned to me on May 19, 2022.

Items 1 and 2 are the SOR and Applicant's Answer, which are the pleadings in the case. Items 3-6 are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations (§§ 1.a – 1.k). His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 41 years old. This is his first application for a security clearance. He has been employed as an engineering technician by a defense contractor since 2020. He earned a high school diploma through a correspondence course in 2004. He was married in 2003, and has two adult and two minor children. (Item 3)

Applicant's SCA shows that he has been consistently employed since 2008. In his Answer, he claimed that the reason for his outstanding debt was because he was laid off and out of work for almost a year. He stated that when he became re-employed, his pay was not enough to cover his living expenses and resolve his debt. He asserted that he is trying to resolve outstanding debt, but he did not provide any further details. (Item 3)

In his 2021 background interview with a government investigator, Applicant was asked about all of the debts alleged on the SOR. He was unable to provide almost any information about the accounts, other than affirming that the debts were not resolved. He stated his financial issues began in 2014 when he was laid off from a high-paying job. He was also addicted to illegal drugs at that time, which he claimed caused him to make poor financial decisions. Between the drug use and lower pay at his next job, it caused him to stop making payments on his debts. He asserted that most of these debts were incurred in 2013, when he was earning more. He stated that he has not addressed his delinquent debts, because his focus has been on staying sober and taking care of his family. Applicant has had other periods of illegal drug use and addiction when he was younger, and served time in prison for related offenses. (Item 3, 4)

The SOR alleges seven charged-off debts totaling \$21,754, and four debts in collection, totaling \$3,461. The status of the debts follows:

SOR § 1.a is an auto loan that was charged off for \$7,985. It is not resolved. (Item 4, 5)

SOR § 1.b is a credit-card account that was charged off for \$4,401. It is not resolved. (Item 4, 5)

SOR § 1.c is a credit card that was charged off for \$2,339. It is not resolved. (Item 4, 5)

SOR ¶ 1.d is a credit card that was placed in collection in the amount of \$1,958. It is not resolved. (Item 4, 5)

SOR ¶ 1.e is a debt that was placed for collection in the amount of \$761. Applicant stated that it was for items purchased through a catalogue in 2013 or 2014. The debt is not resolved. (Item 4, 5)

SOR ¶ 1.f is a credit card that was charged off for \$759. It is not resolved. (Item 4, 5)

SOR ¶ 1.g is a credit card that that was placed for collection in the amount of \$668. It is not resolved. (Item 4, 5)

SOR ¶ 1.h is a credit card that was charged off for \$461. It is not resolved. (Item 4, 5)

SOR ¶ 1.i is a medical debt that was placed for collection in the amount of \$74. It is not resolved. (Item 4, 5)

SOR ¶ 1.j is a credit card that was charged off for \$5,138. It was opened in 2012, and the last payment was made in 2015. This debt is not resolved. (Item 4, 5, 6)

SOR ¶ 1.k is a debt that was charged off for \$761. In his background interview, Applicant claimed that this debt is a duplicate of ¶ 1.e. The credit report shows that original creditor and the debt amounts are the same, and it notes that the debt was purchased by another lender. This account is likely a duplicate of 1.e, which is held by a collection agency. (Item 4, 5)

Applicant did not provide any documentation showing that any of his debts have been or are being paid, disputed, or otherwise resolved. He also submitted no documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He provided no evidence that he has received credit counseling.

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

The SOR allegations are established by Applicant's admissions, and the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

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;
- (c) 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; 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.

AG ¶ 20 (a) partially applies because Applicant stated that he is no longer using or addicted to illegal drugs, which he asserted caused him to make poor financial decisions. However, he has had other periods of illegal drug use and addiction, so it cannot be found that such circumstances are unlikely to recur. Furthermore, he did not provide documentation showing that any of his debts are currently being paid, or have been resolved, nor has he claimed that any are resolved. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failure to pay his charged-off and delinquent debts is recent, not isolated, and are ongoing. This continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not fully apply.

While Applicant claimed in his Answer that being out of work for almost a year caused him to stop paying his debts, he did not report any periods of unemployment on his SCA. He also stated that he earned less at his next job, but he did not provide any

details about the difference in income, and how long that circumstance lasted. Since he has made no documented effort to resolve any of his charged-off or delinquent debts, there is insufficient evidence to find that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant claimed that ¶ 1.k is a duplicate of ¶ 1.e. While he provided no documentation to support his assertion, the credit report in the record supports this finding. The original creditor and debt amounts are the same, and the creditor in ¶ 1.e. is a collection agency, which would explain why the debts have different account numbers. AG ¶ 20(e) applies to SOR ¶ 1.k.

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 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's charged-off and delinquent debts under Guideline F.

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.j:	Against Applicant

Subparagraph 1.k:

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.

Ross D. Hyams
Administrative Judge