



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



In the matter of:)	
)	
)	ISCR Case No. 21-02525
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

07/15/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 14, 2019. On December 16, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 23, 2021. He elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA) on the administrative (written) record, in lieu of a hearing. On February 25, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 9. DOHA mailed the FORM to Applicant the same day, and on May 17, 2022, he signed a receipt for it and sent a confirming e-mail to DOHA. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation.

Applicant did not otherwise respond to the FORM, and on May 13, 2022, the case was assigned to me for a decision. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 9 are admitted into evidence without objection.

Findings of Fact

In his response to the SOR, Applicant admitted all of the debts alleged in the SOR (¶¶ 1.a through 1.i), noting that several of the smaller debts had been paid off. He provided a narrative explanation but no documents. 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 additional findings of fact.

Applicant is 38 years old. He was married for about 14 months, from November 2005 to February 2007. The marriage ended in divorce, with no children. He has lived with a cohabitant since 2009, and disclosed two children born since then, ages 12 and 10. (Item 2, Item 3)

After graduating from high school in 2002 (Item 3), Applicant served in the U.S. Air Force from March 2003 to September 2012. He was discharged honorably, with the rank of staff sergeant (E-5), due to injuries he sustained in an auto accident. (Item 2) Since June 2012, he has worked for a large defense contractor, employed on an Air Force base as an aircraft supervisor. (Item 2) He has held a clearance since 2003, when he joined the Air Force. (Item 3 at 3)

Applicant submitted an SCA in October 2019. He disclosed several delinquent debts, and explained that after a second auto accident, in August 2018, he was placed on disability for nine months, and his income was reduced to 75% of what it was. As a result, he fell behind on his payments and financial obligations. He noted that he had retained a debt collection agency to help him resolve several of his accounts, and was paying \$25 per week, per account, until the account is paid off. (Item 2; Items 8, 9)

The record includes three credit bureau reports (CBRs), dated November 2019, September 2021, and February 2022, which establish the delinquent accounts alleged in the SOR. (Items 1, 5, 6, 7) He discussed his debts in his background interview and provided updated information, including documentation about various debts and a July 2021 CBR, in an August 2021 interrogatory response. (Items 3, 4)

The SOR debts total about \$39,000. The debts are detailed as follows:

SOR ¶¶ 1.a (\$20,120), 1.b (\$5,983), and 1.c (\$9,240) are accounts that have been charged off by a bank (the same creditor for each account). These accounts represent about \$35,000 of the \$39,000 alleged SOR debts. They became past due in 2018 or 2019, were placed for collection, and have now been charged off. (Items 6, 7) Applicant disclosed these three debts on his SCA. (Item 1) He said in his interrogatory response that the debts remained unpaid and he provided no additional documentation about them. (Item 4 at 3, 4, 9) He provided no additional information in his SOR response about these debts, which remain unresolved.

SOR ¶ 1.d (\$758) is a past-due auto-loan account. (Item 4 at 11-12) As of February 2022, the account was in repossession status with a balance of \$3,725, of which \$1,138 is now past due. (Item 7 at 5) Applicant admitted the debt and provided no additional information in his SOR response. The account is unresolved.

SOR ¶ 1.e (\$985) is an account that has been charged off. This is an auto loan, initially for \$27,585. The account was charged off in October 2019. (Item 5 at 9; Item 6 at 3; Item 7 at 6) Applicant admitted the debt, noted in his interrogatory response that the account remained unpaid, and provided no additional information. (Item 4 at 4) . The account is unresolved.

SOR ¶ 1.f (\$1,537) is an account that has been placed for collection. (Item 6 at 2; Item 7 at 2) Applicant admitted the debt, noted in his interrogatory response that the account remained unpaid and provided no additional information in his SOR response. The account is unresolved. (Item 4 at 6)

SOR ¶¶ 1.g (\$258), 1.h (\$56), 1.i (\$10), 1.j (\$60), 1.k (\$57), and 1.l (\$57) are all medical debts reported for collection. (Item 5 at 7-8, Item 6 at 3) In his SOR response, Applicant reports that all of these accounts have been paid. Though he provides no documentation, the credit reports support that the accounts have been paid. I consider these debts resolved.

In his interrogatory response, Applicant provided a personal financial statement (PFS) and a paystub, among other documents. He earns about \$104,000 annually. In his PFS, he only listed one debt: his \$1,852 mortgage. (Item 4 at 10, 13)

In his response to the SOR, Applicant noted that he has held a clearance both in the Air Force and with his current employer, without incident. He said that after his August 2018 auto accident he was on disability for six months, reducing his income to 60% of what it was (rather than 75% and for nine months, as he noted earlier). He said he is getting back on his feet but has had some setbacks. He said he had paid off over half of the debts in the SOR, and was beginning to address the rest. He said many of his debts were medical bills related to injuries from the accident, since the VA's medical insurance denied out-of-network providers who treated him. (Item 1 at 8)

Applicant provided no documentation with his SOR response. He gave no additional details of his efforts to address his SOR debts, whether through the debt

collection company, or otherwise. While he indicated that “over half” of his SOR debts have been paid, this appears to refer to the number of debts of which he says that the smallest six debts, all medical accounts, have been paid off. That accounts for about \$500 in debt payments, out of about \$39,000 in delinquent accounts alleged and admitted. Applicant noted that when he pays off one account, he moves on to the next, and believes he is on a good path to address his accounts in collection. (Item 1 at 8)

Applicant provided no documentation to support his assertions that his financial stability has improved. The record did not indicate that he participated in credit counseling through the debt collection agency he mentioned in his SCA or otherwise.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred numerous debts in recent years. The debts are established by the credit reports in the record, and by Applicant's admissions. AG ¶¶ (a) and 19(c) apply.

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, or 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's debts are largely ongoing and unresolved. They continue to cast doubt on Applicant's current reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant stated that his income suffered after he went on disability for several months following an August 2018 auto accident. His debts post-date this event, which is a circumstance beyond his control that has impacted his finances. Several small debts, alleged in SOR ¶¶ 1.g through 1.i, are medical debts, likely related to his accident, and they are resolved. For full credit under AG ¶ 20(b), however, Applicant must establish that he has acted reasonably under the circumstances. Even if Applicant is addressing his debts one at a time, only about \$500 of his debts have been paid off. He sets forth no evidence of action to address his larger debts. AG ¶ 20(b) does not fully apply. Similarly, he did not provide sufficient evidence under AG ¶ 20(d) that he initiated and is adhering to a good-faith effort to pay or resolve his non-medical debts. AG ¶ 20(c) does not apply, as Applicant has not shown that he has participated in credit counseling or that his debts are being resolved or are under control.

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(a), 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.

Given the limited documentation in the case, and the small amount of debt that is resolved compared with the amount outstanding, Applicant did not provide sufficient evidence to mitigate his delinquent debts, even if they occurred due to a decline in income following an auto accident. I considered his career in the Air Force and with his current employer as favorable whole person evidence. Since Applicant requested a decision on the written record, I did not have the opportunity to question him in a hearing about the status of his SOR debts, to better assess the reasonableness of his actions in addressing them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For these reasons, I conclude Applicant did not provide sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations due to his delinquent debts.

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.f:	Against Applicant
Subparagraphs 1.g-1.i:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge