



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



In the matter of:)
)
) ISCR Case No. 20-03553
)
Applicant for Security Clearance)

Appearances

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

07/26/2022

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 22, 2021, 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 May 3, 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 30, 2022. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. At Applicant's request, I left the record open for Applicant to provide documents to support his case. He provided post-hearing documents consisting of six pages that were admitted in evidence without objection as Applicant's Exhibit (AE) A.

Findings of Fact

Applicant is a 55-year-old employee of a government contractor. While the names of the contractors for whom he has worked have changed because of mergers or because a new company has been awarded a contract, he has worked in the same position since January 2008. He earned a high school diploma in 1984 and an associate's degree in 2010. He has been married since 2006. He was married once before from 1990 until 2001. Applicant has four children, two of whom are minors for whom he is financially responsible. He had a step-child who passed away in April 2010 at the age of 11 from a genetic disorder. He and his current spouse lived separate and apart for about a month from March 2021 until about April 2021. (Transcript (Tr.) 19-26; 40-41; Applicant's response to SOR; GE 1)

The SOR alleges Applicant's 1998 and 2010 Chapter 7 bankruptcy filings and discharges (SOR ¶¶ 1.a and 1.b), as well as eight delinquent debts totaling approximately \$96,000. These delinquencies consist of student loans (SOR ¶¶ 1.c and 1.d), and medical debts (SOR ¶¶ 1.e through 1.j). Approximately \$90,000 of the delinquent debt in the SOR is for delinquent student loans. Applicant admitted all of the SOR allegations with additional comment. His admissions are adopted as findings of fact. (Tr. 18-20, 25-39, 43-49, 54-55; Applicant's response to SOR; GE 1-7; AE A)

Applicant filed a Chapter 7 bankruptcy case in January 1998. This bankruptcy was discharged in April 1998. Applicant claimed that he filed this bankruptcy because his ex-wife was incurring debt, but not contributing to their income because she was not working. He claimed that he decided it would be better for him to discharge their debts because he thought he would have to pay all of it himself when he and his ex-wife split up. He had between \$50,000 and \$100,000 in debt consisting of credit cards and loans discharged in this bankruptcy. (Tr. 25-26; Applicant's response to SOR; GE 2)

Applicant filed another Chapter 7 bankruptcy case in April 2010. This bankruptcy was discharged in August 2010. Under Schedule D, Creditors Holding Secured Claims, the petition listed two auto loans totaling \$52,157. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$24,239 in student loans. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed claims totaling \$364,055. The Schedule F claims included \$82,155 in student loans. Applicant claimed that he filed this bankruptcy because he had a lot of medical debt from the cost of care for his stepdaughter who was gravely ill. He also claimed that he decided to file this second bankruptcy because he had abandoned his home as he decided the home was too small for his family to live in. Providing medical care for his stepdaughter and having space for her medical equipment played a major role in this decision. After trying to negotiate a settlement with his mortgage company, he abandoned the home and rented another home. He did not attempt to sell his home because he claimed it was in disrepair. He stopped making mortgage payments on the abandoned home. He claimed that once his other creditors noticed that he had defaulted on his mortgage loan, they accelerated his debts on their accounts and he could not afford to pay them. (Tr. 26-29, 43-46; Applicant's response to SOR; GE 1, 3)

The student loan debts alleged in SOR ¶¶ 1.c and 1.d have not been resolved. Applicant took out these loans from 2004 through 2008 or 2009. The loans first became due sometime in 2010, but Applicant consistently applied for forbearance or deferrals for several years. Applicant may have made one or two payments on his student loans after 2010, but he also testified that he was not sure about making these payments and he may not have made any payments. The February and August 2020 credit reports reflect a last activity date of October 2018. The July 2021 credit report reflects a delinquency date of October 2018 for both debts. Applicant provided no documentation to support his contention that he made any payments on these loans. He provided no documents to corroborate whether or when his student loans were in forbearance or deferred prior to being referred to collections. He claimed that he did not realize that his student loans were delinquent until his March 2020 clearance interview, but acknowledged that he had not checked on their status for some time prior to that. Applicant tried to contact the government to rehabilitate his student loans for a couple of months beginning in March 2020 but couldn't get through to anyone. He speculated that his inability to connect with someone was because of the pandemic. After these attempts in spring of 2020, he stopped trying to rehabilitate his student loans until about December 2021. In December 2021, he entered into a student loan rehabilitation agreement with the government and his loan servicer that calls for him to contact the loan servicer to begin to make payments on his debt. He plans to contact his loan servicer in August 2022. He admitted that he contacted the government in December 2021 to attempt to rehabilitate his student loans because he received the SOR. I have taken administrative notice that all federal student loans were eligible for placement in a deferment status as of late March 2020 at the earliest. Therefore, available evidence shows that Applicant was delinquent on these debts prior to any placement in a deferment status. (Tr. 29-35, 46-49; Applicant's response to SOR; GE 1, 4-7; AE A)

The delinquent medical debts listed in SOR ¶¶ 1.e through 1.j have been settled. The activity dates listed on the credit reports for the medical debts in SOR ¶¶ 1.e through 1.h are no later than September 2018. The credit reports for the debts in SOR ¶¶ 1.i and 1.j do not list activity dates. These SOR medical debts arose from a medical emergency when Applicant suffered from atrial fibrillation (a-fib) in 2018. In addition to his direct medical expenses, Applicant also paid about \$300 to \$400 per month for medication related to his a-fib from 2018 until late 2019 or early 2020 when he switched cardiologists and began paying about \$75 per month. In April 2021, Applicant borrowed money from his brother and settled all the debts listed in SOR ¶¶ 1.e through 1.j. He provided corroborating documentation that he settled these accounts. After settling these accounts, he borrowed money from his retirement savings in order to pay his brother back. He admitted that receiving the SOR was what motivated him to take action to settle these medical debts. (Tr. 35-36, 51-54; Applicant's response to SOR; GE 1, 4, 5)

Applicant earns \$52.26 per hour and works full-time. He occasionally works overtime. He made approximately \$80,000 in 2021, but that amount was lower than expected because he suffered a broken arm and could not work for about three and a half months. During the time he was injured, he was paid disability and a small stipend from his union. His wife contributes to the family income and has earned between \$20

and \$23 per hour over the past three years as an employee of State A. However, before her child passed away in about 2011, his wife had a hard time finding steady employment because of the time-consuming medical care that her daughter required. Applicant's wife handles all the finances because Applicant claims that he has limited access to electronic devices in his workplace. He and his wife pay \$1,850 per month for the mortgage on the house they purchased in 2014. They have a \$600 per month car payment for a 2018 SUV they purchased in 2018. They pay approximately \$300 per month for electricity and pay the full balances on their credit cards every month. Applicant testified that he has between \$15,000 to \$20,000 in his checking account and \$5,000 to \$10,000 in his savings account. When asked why he did not use this money towards his SOR debts, he claimed that he did not have it at the time because he was living apart from his wife and they were paying for two places to live. Applicant and his wife do not follow a written budget and he could not specify how much money he has left over at the end of each month after paying his bills. He has not received any financial counseling other than what was required for his bankruptcies. (Tr. 21-25, 39-42; Applicant's response to SOR; GE 1-3)

In addition to the aforementioned causes, Applicant attributed his financial issues to the 2013 government shutdown and a ruptured biceps tendon he suffered in 2013 that kept him out of work for five to six months. He had to take a loan from his retirement account at this time in order to keep up with his financial obligations. He also suffers from silicosis, or scarring of the lungs, as a result of breathing in fine particles of silicon at a worksite where he worked from 1999 through 2002. (Tr. 28-29, 56-57)

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.

Applicant has twice afforded himself fresh starts through Chapter 7 bankruptcies, thereby discharging hundreds of thousands of dollars of debt. Despite his latest discharge, he once again found himself with financial problems. He has made, at most, one or two payments on a significant amount of student loan debt that has been due for over a decade, and has been in collection for several years. He also had delinquent medical debt that went unresolved for many years. 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;

(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 financial problems were caused by divorce, his health problems, his stepdaughter's health problems and untimely passing, and marital issues with his current wife. These causes were beyond his control. However, he also suffered financial issues because of his voluntary decision to abandon his home without attempting to sell it because he decided he needed a bigger place. This cause was not beyond his control.

While I will consider Applicant's bankruptcies as part of his overall history of financial stability, Applicant's bankruptcies occurred in 1998 and 2010. SOR ¶¶ 1.a and 1.b are mitigated as the latest bankruptcy occurred 12 years ago.

The student loan debts listed in SOR ¶¶ 1.c and 1.d have not been mitigated. Those debts are in a deferment status because of the pandemic and because of Applicant's actions after he received the SOR. However, Applicant had already

defaulted on his student loans prior to deferment. When student loans are placed in a deferment status after they are in default, Applicant's past inactions are not excused in the context of security clearance eligibility. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). Also, an applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Applicant stated that he intends to bring and keep his student loan debts current once his deferment period ends. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is documentary corroboration that the medical debts alleged in SOR ¶¶ 1.e through 1.j have been resolved through payment. However, Applicant resolved these debts after he received his SOR and admitted that receiving it was what motivated his actions. As with Applicant's timing of his attempts to resolve his student loans, his settlement of his medical debts when he learned his clearance was in jeopardy is of little mitigative value. AG ¶ 20(b) and AG ¶ 20(d) only partially apply to the medical debts.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his student loans and medical debts. While he received mandatory financial counseling through his bankruptcy, he had financial problems again after the counseling. His prolonged history of financial problems with little to no track record of financial stability fails to show that his financial issues are unlikely to recur. His financial issues 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.

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.j:	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