



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-01814
)
Applicant for Security Clearance)

Appearances

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

06/28/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. He mitigated the criminal conduct security concerns. The personal conduct security concerns were not established. Eligibility for access to classified information is denied.

Statement of the Case

On November 8, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. Applicant responded on December 22, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on February 3, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 7, 2022. As of April 27, 2022, he had not responded. The case was assigned to me on May 13, 2022. The Government exhibits included in the FORM are admitted into evidence without objection. Applicant submitted 20 pages of documents with his response to the SOR. Those attachments are considered part of the record in this case.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since March 2020. He has been continuously employed since 2008. He earned a bachelor's degree in 2013. He served on active duty with the U.S. Army from 1997 until 2006, when he was awarded an honorable discharge. Applicant has been married and divorced three times. His marriages were from 1999 until 2000, from 2003 until 2004, and from 2005 until 2012. He has one minor child and one adult child. Applicant has been awarded a clearance at least three times in the past. (Items 2, 3, 4, 5)

Under Guideline F, the Government alleged in its SOR that Applicant had 10 delinquent debts totaling about \$63,500. Applicant's delinquent debts consisted of child-support payments due to State A, credit cards, and personal loans. Applicant admitted all the debts described in the SOR. He claimed that he has either paid or is making monthly payments on all these debts with the exception of the debt listed in SOR ¶ 1.h. He alleged that the debt in SOR ¶ 1.h is an "old debt" that he needs to have removed from his credit report. His admissions are adopted as findings of fact. Applicant alleged that his financial issues arose as a result of his having to pay more than he could afford for medical bills in about mid-2019. As of late 2019, he has been working with a debt consolidation company in order to resolve his delinquent debts. The Guideline F SOR allegations are established through the Government's evidence and Applicant's admissions. (Items 1-4, 6-8)

The \$7,880 child-support debt to State A listed in SOR ¶ 1.a has been resolved through payments. Applicant presented documentary evidence in his response to the SOR that, in March 2021, he made three payments on this debt for a combined total of \$3,700. His 2022 credit report reflects that this account is current. (Items 1-4, 6, 8)

The \$23,764 personal loan listed in SOR ¶ 1.b, has not been resolved. Applicant claimed that he has been making payments on this debt since late 2019 and that he has satisfied it. He provided what may be documents from his debt consolidation company purportedly showing that he has made 24 of 24 settlement payments on this debt. However, his 2022 credit report still shows this debt as charged off with a last payment date in March 2019. He provided no documents from the creditor showing the debt has been resolved. Moreover, his documents that may be from his debt consolidation company lack sufficient context such as the amounts of the alleged payments or an agreement with the creditor to conclude the debt has been satisfied. (Items 1-4, 6-8)

The personal loan and credit-card debts listed in SOR ¶¶ 1.c and 1.i have been resolved. Applicant claimed that he has been making payments on these debts since late 2019 and that he has satisfied them. He provided what may be documents from his debt consolidation company showing settlement payments made on these debts. His 2022 credit report corroborates that these debts have been settled for less than the full amount. (Items 1, 2, 4, 6-8)

The credit-card debts listed in SOR ¶¶ 1.d, 1.e, and 1.f have been partially resolved through payments. Applicant claimed that he has been making payments on these debts since late 2019. He provided documents that may be from his debt consolidation company purportedly showing the number of monthly settlement payments he has made on these debts. Applicant's 2022 credit report confirms that payments have been made on these accounts, as the balance on each of them is lower than those listed on his 2021 credit report. (Items 1, 2, 4, 6-8)

The credit card debt listed in SOR ¶ 1.g has the same account number and original creditor as the credit card account in SOR ¶ 1.d. It is a duplicate account and is therefore resolved. (Items 1, 2, 4, 6-8)

The \$4,040 automobile loan debt listed in SOR ¶ 1.h has not been resolved. Applicant told the investigator during his March 2020 clearance interview that he had paid this debt years ago. In his response to the SOR, he claimed that he needed to have the debt removed from his credit report and that it was "not on my records that I could find." Applicant presented no documentary evidence that he has made a payment, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt does not appear on Applicant's 2021 or 2022 credit reports. (Items 1, 4, 5, 6)

The \$1,507 credit-card debt listed in SOR ¶ 1.j has not been resolved. Applicant claimed that he has made payments on this debt and that he has satisfied it. He provided what may be documents from his debt consolidation company purportedly showing that he has made his settlement payment on this debt. However, his 2022 credit report still shows this debt as charged off with a last payment date in April 2019. He provided no documents from the creditor showing the debt has been resolved. Moreover, his documents that may be from his debt consolidation company lack sufficient context such as the amounts of the alleged payments or an agreement with the creditor to conclude the debt has been satisfied. (Items 1, 2, 4, 7, 8)

As evidenced by his 2014 clearance interview, Applicant had delinquent debts when that interview was conducted. Applicant did not respond to the FORM, so more recent information regarding his finances is not available. (Item 5)

On about December 3, 2019, the sheriff's department in County A charged Applicant with destruction of property, entering property to damage, and dumping trash on a highway or private property, all misdemeanors. These charges were dismissed. Later in December 2019, a court in County A issued a protective order against Applicant in favor of another individual. A court's entry of a protective order may indicate that it found instances of criminal behavior. However, there is insufficient evidence in the record to establish that this protective order was entered based upon Applicant's criminal behavior. This protective order was dismissed in September 2020. (Items 1, 2, 4, 9, 10)

In the SOR, the Government alleged Applicant's aforementioned criminal charges and the protective order that a court entered against him under Guideline J. (Items 1, 2, 4, 9, 10)

Despite being required to do so, Applicant failed to disclose his aforementioned criminal charges on the Questionnaire for National Security Positions he submitted in January 2020 (January 2020 SF 86). While he admitted that he failed to disclose this information in his January 2020 SF 86, he claimed this omission was unintentional because he was not "arrested" when he was criminally charged. An incident report related to these criminal charges was created in February 2020, however, there is insufficient evidence to conclude that Applicant was confronted with his failure to disclose these criminal charges in his January 2020 SF 86. He did not discuss these criminal charges during his March 2020 clearance interview, however, his investigator did not confront him with these criminal charges. Applicant disclosed these charges on the Questionnaire for National Security Positions he submitted in June 2020 (June 2020 SF 86) before being confronted. (Items 1-4, 9, 10)

In the SOR, the Government alleged Applicant's failure to disclose these criminal charges in his January 2020 SF 86 under Guideline E. (Items 1-4, 9, 10)

While Applicant disclosed the delinquent debt listed in SOR ¶ 1.a in his January 2020 SF 86, he was also required to report the SOR debts listed in SOR ¶¶ 1.b-1.j. Applicant therefore failed to disclose all of the delinquent debts that he was required to on his January 2020 SOR. An incident report related to these financial delinquencies was created in February 2020, however, there is insufficient evidence to conclude that Applicant was confronted with his failure to disclose these delinquencies in his January 2020 SF 86. Applicant disclosed several of these SOR and other delinquent debts during his March 2020 clearance interview before being confronted by his investigator. Applicant also disclosed many of these SOR and other delinquent debts in his June 2020 SF 86. In his response to the SOR, Applicant admitted that he failed to disclose SOR ¶¶ 1.b-1.j in his January 2020 SOR, but referenced his efforts to pay or otherwise satisfy those debts, alluding to his understanding that those debts were not delinquent. (Items 1-4, 6-8, 10)

In the SOR, under Guideline E, the Government alleged Applicant's failure to disclose all of the SOR debts he was required to in his January 2020 SF 86. (Items 1-4, 6-8, 10)

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 had many financial delinquencies. These delinquencies included child-support payments, credit cards, and personal loans. The evidence is sufficient to raise the above disqualifying conditions and shifts 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.

There is documentary evidence that the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.i have been resolved through payments and are now current or satisfied. The debts in those SOR subparagraphs are concluded for Applicant

The evidence shows that the debt in SOR ¶ 1.g is the same account as that alleged in in SOR ¶ 1.d. The debt alleged in SOR ¶ 1.g is concluded for Applicant.

Despite having made some payments to address some of the debts in the SOR, Applicant still has financial delinquencies. The delinquent debt described in SOR ¶ 1.h remains unaddressed. As evidenced by the information in his 2014 clearance interview, he has failed to stay current on a number of his credit obligations in the past. Applicant has not met his burden of showing that his financial issues are a thing of the past, are infrequent, or are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial issues to having to pay medical bills for an unspecified medical issue in mid-2019. An unexpected medical emergency is normally considered a circumstance beyond one's control, and I find as such in this instance. Applicant did not specify the nature of the medical issue, nor did he specify how much he paid in medical bills. Applicant also did not provide an overview of his budget, income, or expenses. Without more information, such as the timing of the payments, or the amount of his medical debt, I cannot determine whether his efforts can be considered acting responsibly under the circumstances. Therefore, AG ¶ 20(b) does not apply.

Applicant has presented evidence that he is receiving some form of financial counseling through a debt consolidation company in order to address his financial issues. Applicant's payments on some of his debts are corroborated by documents and appear to have been made prior to the date the Government issued its SOR. For example, for several SOR debts, Applicant alleged he made payments through a debt consolidation company and his 2022 credit report reflected payments. However, several of the SOR debts on which Applicant alleged payments are not conclusively corroborated by documents. For example, Applicant alleged payments on some SOR debts and provided documents that he claimed are from a debt consolidation company that show payments, but his 2022 credit report does not reflect these payments. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. As he has provided evidence of his use of a debt consolidation company and adequate proof of payments on some of his debts, he has partially shown that he is resolving his financial problems. AG ¶¶ 20(c) and (d) partially apply.

None of the mitigating factors fully apply. Applicant's efforts to resolve his financial issues through payments, while a step in the right direction, do not constitute a track record of financial responsibility. His financial issues continue to cast doubt on his current reliability, trustworthiness, or good judgment.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's 2019 criminal charges for destruction of property, entering property to damage, and dumping trash on a highway or private property establish the above disqualifying condition. The evidence does not establish the basis for the 2019 protective order, and I cannot assume that it was entered because of Applicant's criminal conduct. Therefore, there is insufficient evidence that the 2019 protective order issued against Applicant was criminal in nature, and that portion of SOR ¶ 2.a does not establish the above disqualifying condition.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's misdemeanor criminal charges relate to an incident that occurred two and a half years ago. There is insufficient evidence that he has engaged in criminal behavior before or since. This passage of time since the criminal behavior occurred, along with the lack of evidence of earlier criminal conduct convinces me that criminal conduct is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. It also convinces me that there is evidence of successful rehabilitation. AG ¶¶ 32(a) and (d) apply. The Guideline J allegations are mitigated and SOR ¶ 2.a is concluded for Applicant.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to list his aforementioned criminal charges on his January 2020 SF 86 despite being required to do so. He admitted that he did not disclose this information but claimed the omission was unintentional as he had never been arrested, but merely charged. While Applicant disclosed one required debt, he also failed to disclose all of the debts that he was required to on his January 2020 SF 86. He admitted this allegation, but alluded to his understanding that those undisclosed debts were no longer delinquent. While Applicant's apparent understanding of what he was required to report on the relevant portions of his January 2020 SF 86 is inaccurate, his misunderstanding and explanation of that misunderstanding is plausible. Given Applicant's plausible explanations, I find he did not deliberately omit or falsify information on his January 2020 SF 86. Guideline E is not established and SOR ¶¶ 3.a and 3.b are resolved in favor of Applicant.

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 Guidelines F, J, and E in my whole-person analysis. I have also considered Applicant's honorable military service

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. Applicant mitigated the criminal conduct security concerns. The personal conduct security concerns were not sufficiently established.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	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.

Benjamin Dorsey
Administrative Judge