



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



In the matter of:)
)
 . -----) ISCR Case No. 21-00115
)
 Applicant for Security Clearance)

Appearances

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

07/29/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on May 17, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on June 23, 2021, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on September 16, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government’s file

of relevant material (FORM) on March 7, 2022, including documents identified as Items 1 through 6. Applicant received the FORM on March 18, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on April 21, 2022 (Response). The SOR and the Answer are the pleadings in the case. (Items 1 and 2.) Items 3 through 6 are admitted without objection. The case was assigned to me on May 13, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 42 years old with no children. He was married from October 2004 until his divorce in August 2016. Applicant has about a year and a half of college credits. Applicant served on active duty in the U.S. Air Force from January 2003 until July 2016, when he was honorably discharged. He was unemployed from June 20016 until May 2017, while transitioning from the Air Force. For part of that time, from September 2016 until March 2017, Applicant was taking college courses.

Since May 2017, Applicant has been employed by a defense contractor. Applicant attributes his financial difficulties to two factors. First, he was unemployed upon leaving the Air Force. Second, during his marriage, Applicant had always allowed his spouse to handle finances. In 2015, he was separated from his spouse and anticipated their divorce. Applicant did not know that his spouse had not filed 2014 joint federal income tax returns. Upon his separation and divorce, Applicant was unaware of the status of his credit cards. He was divorced in August 2016, just after he left the Air Force. (Items 3 and 4.)

The SOR alleged seven delinquent accounts totaling \$31,015. (Item 1.) Applicant admitted SOR ¶¶ 1.b., c., f., and g. He denied SOR ¶¶ 1.a., d., and e. (Item 2.) More specifically, Applicant answered each SOR as follows:

SOR ¶ 1.a. (\$1,821 owed to the IRS for failure to file his 2014 tax return): Applicant's documents showed that he made nine payments to the IRS under a plan from 2/22/21 to 8/20/21 (seven for \$180, one for \$32, and one for \$327). This debt does not appear on the Government's credit reports. (Items 5 and 6.) Applicant disclosed this debt in his SCA and discussed it in his personal subject interview. (Items 3 and 4.)

SOR ¶ 1.b. (\$14,133): Applicant answered that a financial advisor told him to rebuild his credit and let this debt expire due to age.

SOR ¶ 1.c. (\$6,864): Applicant answered that a financial advisor told him to rebuild his credit and let this debt expire due to age.

SOR ¶ 1.d. (\$4,786): Applicant's documents showed that he made 13 payments under a plan from 8/14/20 to 7/14/21 (12 for \$199 and one for \$29).

SOR ¶ 1.e. (\$1,664): Applicant's documents showed that he paid this debt in full on March 17, 2021.

SOR ¶ 1.f. (\$1,272): Applicant answered that having resolved several debts, he is moving to pay this off.

SOR ¶ 1.g. (\$475): Applicant answered that this debt is next in line and should be paid in full by the end of October 2021. (Item 2.)

In sum, Applicant's documents show payments made to retire SOR ¶¶ 1.a., d., and e. totaling \$8,271. Applicant did not produce any documents relating to SOR ¶¶ 1.b., c., f., and g. totaling \$22,744. (Item 2 and Response.) In his Response, Applicant produced an April 21, 2022 letter from the Department of Veterans Affairs verifying his monthly disability benefit (\$1,897). He also produced his employment pay stubs from January 2022 to August 2022 (\$1979 every two weeks). (Response.) SOR ¶¶ 1.b., c., f., and g. remain in collections or past due on Applicant's credit reports. (Items 5 and 6.) Aside from the SOR debts, Applicant's financial history and current finances are good. (Item 4.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court 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 A2(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 Guideline F 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. . . .

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).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The followings conditions are applicable in this case:

- (a) inability to satisfy debts; and

- (f) failure to file . . . annual Federal, state or local income tax returns . . . as required.

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and (f) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F 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 . . .), and the individual acted responsibly under the circumstances);
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems did not occur that long ago. They arose in 2015 and mid-2016, when he was separated from his wife after 13 years of marriage and transitioning from the Air Force to civilian life after 13 years of service. Applicant divorced in August 2016. He became unemployed and was in school from June 2016 until May 2017, when he found full-time employment. Due to his separation and divorce, Applicant was unaware of the status of many of his creditors, having left those matters to his former spouse.

Applicant's financial circumstances when he left active duty in July 2016 were far from ideal. He was in the midst of a divorce. Applicant was in school and could not find full-time employment until almost a year later, in May 2017. The record shows no evidence that he had any financial difficulties in the past. Since May 2017, Applicant has had a stable employment record. These conditions are "unlikely to recur" and "were largely beyond [Applicant's] control." Therefore, the predicate factors of AG ¶¶ 20(a) and (b) are satisfied.

The full application of mitigating conditions to the debts alleged in SOR ¶¶ 1.a., d., and e. stand in contrast to the debts alleged in SOR ¶¶ 1.b., c., f., and g. Therefore, they will be discussed in two separate categories.

SOR ¶¶ 1.a., d., and e.

The record shows that Applicant's income tax debt was resolved by a payment plan with the IRS. Applicant complied with that arrangement. Therefore, he mitigated SOR ¶ 1.a. under AG ¶ 20(g).

The record shows that Applicant resolved SOR ¶¶ 1.d. and e. by acting responsibly and by good-faith efforts to repay those debts. That conduct demonstrates

reliability and good judgment. Therefore, Applicant mitigated those debts under AG ¶¶ 20(a), (b), and (d).

SOR ¶¶ 1.b., c., f, and g.

Applicant's answers to SOR ¶¶ b. and c. were that his financial advisor told him to rebuild his credit and let these debts expire due to age. Applicant's advisor is correct that debts may drop off credit reports due to the passage of time. In the national security clearance arena, however, that eventuality is not considered to be meaningful, independent evidence as to the disposition of a debt. See, e.g., ISCR Case No. 15-03907 at 2 (App. Bd. Aug. 2, 2018). ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). As to these two debts, Applicant has not demonstrated good judgment, reliability, or responsible conduct. Therefore, AG ¶¶ 20(a), (b), and (d) do not apply to mitigate these debts.

Applicant's answers to SOR ¶¶ 1.f. and g. were that that he planned to address these debts in the future. This answer essentially amounts to a promise to pay the debts sometime in the future, without any current efforts to do so (such as keeping in contact with the creditors, or negotiating a payment plan that will start at some date in the future). The Appeals Board has previously held that promises to pay, without more, are not substitutes for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner. See, e.g., ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). Therefore, AG ¶¶ 20(a), (b), and (d) do not apply to mitigate these debts.

To summarize, Applicant mitigated SOR ¶¶ 1.a., d., and e. totaling \$8,271. Applicant did not mitigate SOR ¶¶ 1.b., c., f., and g. totaling \$22,744. The unmitigated debts are of sufficient magnitude to raise national security concerns.

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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.,d., e.:	For Applicant
Subparagraphs 1.b.,c., f., g.:	Against 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.

Philip J. Katauskas
Administrative Judge