



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



In the matter of:)
)
) ISCR Case No. 22-00148
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/26/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not present sufficient documentation to support his burden of proof. Eligibility for access to classified information is denied.

Statement of the Case

On February 17, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on April 13, 2022. Applicant received the FORM on May 23, 2022. Applicant provided a response to the FORM (Item 10). The Government's evidence, included in

the FORM and identified as Items 1 through 9, is admitted without objection. The case was assigned to me on July 11, 2022. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

Applicant is 31 years-old, divorced, and has no children. (Item 8) He served in the U.S. Air Force from February 2012 to May 2018, receiving a General Discharge in May 2018. (Items 5, 9) He completed a security clearance application on February 27, 2020. (Item 5) He has held a security clearance since 2011. Applicant has worked for his current employer since October 2019. (Item 5)

Financial

The SOR from February 2022, alleges that Applicant has six delinquent debts totaling over \$26,000. (Item 1) The allegations are supported by Applicant's latest credit report. He admitted all of the SOR allegations. The debts were accrued in 2018 or 2019 after leaving the military. (Item 4)

Applicant attributed the delinquent debts to his immaturity, irresponsibility, and unexpected discharge from the military. (Items 4, 5) He was involuntarily discharged due to multiple reprimands (two Article 15's) and for arriving late to work (poor performance). (Item 5) His medical records confirm that Applicant suffered from severe insomnia and depression which caused him significant functional impairment. (Item 8) Applicant admits that he had difficulty adjusting to military life.

After leaving the military, Applicant was unemployed from May 2018 to October 2019. Since then he has been consistently employed. He disclosed his delinquent debts on his 2020 security clearance application, acknowledging that he had not taken any action yet, but he would have a plan to repay his delinquent debts within the current fiscal year. (Item 5) During his 2020 subject interview, Applicant stated that he had contacted some accounts and was waiting "on a negotiated payment plan." He was also confronted with past delinquent accounts. (Item 9)

Applicant responded to the FORM and stated that he had not put sufficient effort or attention toward fixing his credit. He did not want to resort to bankruptcy and decided the responsible thing to do was to pay his debts in full. (Item 10)

As to SOR 1.a, a collection account in the approximate amount of \$11,466, he considered disputing the account because it was caused by water damage to his apartment. He had reported the issue before, but he was away for two weeks in 2018 while he was on active duty. (Item 4) In his response to FORM, Applicant provided evidence that he made three monthly payments of \$3,822.10 beginning in April 2022, and his balance is now zero. The debt is resolved. (Item 10)

As to SOR 1.b, 1.c, and 1.d, charged-off accounts to the same creditors for a total of \$13,915, in Applicant's answer he stated that they were still delinquent and accrued when he was on active duty. He added that he was irresponsible and flagrant with his credit, but he stated that he has matured. In his answer to the FORM, Applicant stated that he incorrectly reported them as delinquent. He claims that they have all been paid. He does not recall when, but they were transferred to a collection agency and were to be settled at a lower amount. (Item 10) He is looking for the receipts and asking the three credit agencies to have these accounts removed from his credit report. ((Item 10) He did not submit any documentation for his claim.

As to SOR 1.e, a charged-off account in the amount of \$801, Applicant acknowledged that the account was still delinquent. (Item 4) He stated in his response to the FORM that he cannot find the creditor to repay the account, but he stated that it was from Discount Tire. Applicant noted that he would continue to search for the creditor to settle the debt. (Item 10)

As to SOR 1.f, a collection account in the amount of \$351, Applicant stated that the account was delinquent and it was for a debt from college. (Item 4) In his response to the FORM, Applicant stated that he has repaid the balance and has enabled auto pay, to automatically make the monthly payment so that he never misses a monthly payment of \$103.61. Applicant submitted verification of auto pay status for an account that appears to have an \$8,075 balance with a payment due date of September 28, 2022. (Item 10)

Applicant emphasized that since he has been employed he has contributed the maximum amount to a retirement account with an account value of \$62,644.30 as of December 31, 2021. (Items 4, 10) He is keen on raising his credit score. However, he has not made the resolution of his delinquent debts a priority. He states that he intends to pay all, but presented no specific plan or documentation concerning payments. He also obtained a credit card and refinanced a recent auto purchase. (Item 4)

Applicant is gainfully employed. There is no information in the record concerning his income or expenses. No information concerning financial counseling was provided except that he spoke to a financial counselor. He admitted that his livelihood is threatened. Applicant is actively working to recover from the havoc these debts played on his credit score.

Policies

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(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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"); and 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted, and his credit reports confirm, that he has delinquent debt. He blames the debts on an expected military discharge and immaturity. He has not acted responsibly when he became gainfully employed in 2019. This does not show a good-faith effort to resolve his debts. He satisfied one debt in 2022. The other delinquent debts on the SOR are unresolved. He provided no evidence to prove that he has a track record of paying the remaining delinquent debts. He has not sought financial counseling. He is concerned about raising his credit card score instead of paying his delinquent debts.

Based on the scant evidence produced by Applicant, it is impossible to conclude he made a sufficient good-faith effort to resolve his debts or that his financial situation is under control. He claims that he is now mature and intends to continue his efforts to preserve his clearance and continue his government service. I have cause to question whether Applicant has his finances under control. Despite gainful employment, and \$64,000 in his retirement account, Applicant has not submitted documentation that he has resolved his delinquent debts. Any doubts must be resolved in favor of the Government.

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 as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

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
Subparagraphs 1.b-1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge