



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



In the matter of:)	
)	
)	ISCR Case No. 21-02027
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2022

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

On December 16, 2021, 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 4, 2022. Applicant received the FORM on April 14, 2022. He did not provide a response to the FORM. The Government's evidence, included in the FORM

and identified as Items 1 through 7, is admitted without objection. The case was assigned to me on July 29, 2022. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.a through 1.f with no explanations. (Item 1) He is 49 years old, single and has one adult child. He served in the U.S. Navy on active duty from 1999 until his retirement in 2021, receiving an honorable discharge. Applicant has been employed with his current employer since January 2021. He completed a security clearance application on January 4, 2021. (Item 2)

Financial

The SOR alleges that Applicant has six delinquent debts totaling approximately \$31,203. The allegations are supported by his admissions, and credit reports. (Items 4, 5, and 6)

In his answer to the SOR, Applicant presented no information other than his admissions. (Item 1) In his security clearance application, Applicant reported that he had delinquencies involving routine accounts. He listed the two accounts that were alleged on the SOR.

Applicant addressed his delinquent accounts when he was interviewed in February and March 2021 during his subject interviews. (Item 3)

As to SOR 1.a, a charged-off account in the amount of \$598, it is the result of a lost credit card and it has not been resolved.

As to SOR 1.b, a collection account in the amount of \$642, Applicant submitted a communication that is a written agreement with terms for the debt. He arranged for five monthly payments of \$100 to begin in March 2021, but he did not provide any proof that he made any of the payments. (Item 7)

As to SOR 1.c, a charged-off account to a credit union in the amount of \$16,829, Applicant made payments on the credit card until March 2020, but he stopped due to high interest rate and his desire to help his daughter and her newborn after she lost her job due to COVID 19. He understands that it is in collection. He filed a Service Members Relief Civil Relief Act (SCRA claim but acknowledged that no arrangements have been made to resolve the issue. (Item 3)

As to SOR 1.d, a charged-off account in the amount of \$6,542, it is a vehicle repossession after he co-signed for a car note for his daughter. He claimed that he contacted the company and owes about \$3,000. He stated that he set up payment arrangements to repay the debt. However, he did not present any evidence of such

payments. Applicant added that his daughter is to make the payments, but she has not done so.

As to SOR 1.e, a charged-off account in the amount of \$3,965, Applicant stated that this is a furniture bill. He intends to pay this bill as he is now receiving his military pension. The debts occurred because Applicant was attempting to support his family. He stated that he has established payment plans and hopes to have the delinquencies paid within four years. He wants to satisfy his debts and improve his credit score and also help his family. (Item 3)

As to SOR 1.f, a charged-off account in the amount of \$2,627, Applicant admits it is not resolved, but he intends to make an SCRA claim account as he was in the military at the time, and he is entitled to relief. (Item 3)

Applicant stated that he has not been delinquent on child-support payments and has no judgements or liens against him. He has no federal debt. He has had no garnishments of his pay. (Item 3) At the interview, Applicant was advised to provide any relevant documentation, but he did not.

There is no information in the record of Applicant's income, budget, or financial counseling. His earlier credit reports show that he had many accounts "pays as agreed," but his 2022 credit report confirms the delinquent debts on the SOR. (Items 4, 5, and 6)

Applicant did not provide any documentation to demonstrate that he is taking steps to resolve his delinquent debts. He intends to pay his debts, but promises to pay in the future are not sufficient for mitigation. He is trying to help his extended family financially but in his own finances he has not shown any responsibility. He has filed the SCRA claims and he provided a payment arrangement for one debt (1.b), but no proof that he made any payments

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 disqualifying conditions under the guidelines: 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 that he is responsible for his debts and intends to pay them. However, he did not present any evidence to support that he acted responsibly and in good-faith to repay his financial obligations, or has a meaningful track record of repayments. Based on the lack of evidence produced by Applicant, it is difficult to conclude he made a sufficient good-faith effort and to conclude that he has the requisite judgement, reliability, or trustworthiness needed to have access to classified information. He has not met his burden and none of the mitigating conditions apply. 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. Applicant served in the military for 22 years and received an honorable discharge. He did not provide any documentation concerning resolution of his delinquent debt. 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. He has not provided evidence to meet his burden of proof.

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

Conclusion

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

Noreen A. Lynch
Administrative Judge