



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



In the matter of:)
)
) ISCR Case No. 21-00695
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 29, 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 (SOR Response), attaching character reference letters and military performance evaluations. He requested a decision based on the written record in lieu of a hearing.

Department Counsel submitted his written case on June 7, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 14, 2022. In response to the FORM, Applicant provided a narrative document entitled, "Closing Statement," as well as a June 16, 2022 e-mail and two pages of what appear to be medical records (FORM Response). Applicant provided no additional documents. The case was assigned to me on August 4, 2022. The Government exhibits

included in the FORM (Items 1-6), the documents attached to the SOR Response, and the FORM Response are admitted in evidence without objection.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor for whom he has worked since January 2018. He has a high school diploma and has attended some college courses without earning an undergraduate degree. He has never been married, but is engaged to be. He has a two-year-old child. He has served in the U.S. Navy Reserve since 2015. (Items 2, 3, 4, FORM Response)

The SOR alleged Applicant owed five delinquent debts totaling about \$43,000 (SOR ¶¶ 1.a-1.e). Applicant's delinquent debt is largely comprised of credit cards, but also included a telecommunications debt. Applicant admitted the debts in SOR ¶¶ 1.a-1.c, with comments. He denied the two remaining debts, claiming, without corroborating documentation, that he has paid them. The SOR allegations are established through credit reports and Applicant's admissions.

Applicant acknowledged falling behind on his debts. His financial issues began in 2019 when his fiancée began a difficult pregnancy that resulted in multiple hospital stays and caused her to miss work, thereby diminishing her income. Additionally, in May 2020, when his son was born, his son's and his fiancée's health required Applicant to take six months of unpaid leave under the Family Medical Leave Act (FMLA) until about November 2020. As a result of his and his fiancée's lack of income during this time, Applicant used his credit cards to pay for their living expenses. Eventually, he reached the credit limit on these credit cards and could not afford to pay the minimum payments, so the accounts became delinquent. (Items 1-6; FORM Response)

The credit-card debts alleged in SOR ¶¶ 1.a-1.c, totaling approximately \$40,000, have not been resolved. These debts are listed as having been charged off on the January 2021 credit report. Applicant has contacted the creditor in relation to these debts but has yet to make arrangements to resolve them. His plan is to resolve them through payments in the future. (Items 1, 2, 6; FORM Response)

The credit-card debt for \$2,107 alleged in SOR ¶ 1.d has been resolved. Applicant began making payments on this charged-off debt in 2018 through direct payments from his paycheck. It is unclear from the record whether these payments were voluntary or involuntary wage garnishments. Applicant first became delinquent on this debt in 2013. He claimed that he has satisfied this debt through payments and that he attached corroborating documents, but no such documents are part of the record. This debt appears on the 2018 and 2021 credit reports, but the 2021 credit report shows a lower balance than that on the 2018 credit report. (Items 1-6; FORM Response)

The telecommunications debt for \$581 alleged in SOR ¶ 1.e has been resolved. This debt is listed in the January 2021 credit report with an activity date of May 2019. Applicant claimed that the creditor failed to close the account when he requested, resulting in additional charges. He also claimed that he has settled this debt through

payments. He alleged that he provided documents showing that he has satisfied this debt through payments, but no such documents are part of the record. (Items 1, 2, 6; Response to FORM)

Applicant listed delinquent student loans on the Questionnaire for National Security Positions (SF 86) he submitted in March 2018.¹ In his SF 86, he also listed as delinquent the debt alleged in SOR ¶ 1.d. These delinquencies predate Applicant's fiancée's 2019 pregnancy and the birth of his son that Applicant claimed caused his financial problems. (Items 2-6; FORM Response)

Applicant submitted letters from friends praising him for his reliability, honesty, responsibility, trustworthiness, and dependability. He also submitted positive military performance evaluations. (Item 2)

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 within DOD 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,

¹ I will not consider adverse information not listed in the SOR under the disqualifying factors, but I may consider it when applying matters of extenuation and mitigation, and for the whole-person analysis.

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 a history of financial delinquencies that included significant credit-card debt. 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant provided some evidence to show that the debts listed in SOR ¶¶ 1.d and 1.e have been resolved through payment. While he has not provided corroborating documentation of these resolutions, the Government's exhibits corroborate payments on the debt in SOR ¶ 1.d. Moreover, Applicant's character references describe his honesty and trustworthiness. Therefore, I find there is sufficient evidence that he has settled the debts in SOR ¶¶ 1.d and 1.e through payment, and I find in Applicant's favor with respect to those SOR allegations under AG ¶ 20(d).

Applicant attributed his financial problems to his fiancée's and his infant son's health problems, because his family lost income as a result. These circumstances were beyond Applicant's control. However, he has not shown that he acted responsibly under the circumstances. While he was out of work for about six months, he ostensibly began working again in late 2020. Therefore, it has been more than one-and-a-half years since he resumed working. Given this extended length of time, there is insufficient evidence to show that Applicant has made any meaningful or good-faith progress in resolving the greater than \$40,000 in credit-card delinquencies in SOR ¶¶ 1.a-1.c. While he plans to pay these delinquencies in the future, 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).

Applicant also had financial delinquencies prior to his fiancée's pregnancy in 2019. These prior delinquencies detract from his ability to establish that his financial problems are infrequent or occurred under circumstances that are unlikely to recur. Applicant has a substantial amount of unresolved outstanding debt remaining with no clear indication that he can or will resolve it. His financial issues continue to cast doubt

on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered Applicant's ongoing military service, his positive performance evaluations, and his favorable character references. 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 concerns.

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.c:	Against Applicant
Subparagraphs 1.d-1.e:	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 R. Dorsey
Administrative Judge