



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



In the matter of:)
)
) ISCR Case No. 20-02800
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

09/02/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his charged-off and delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 5, 2019. On November 17, 2020, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on November 29, 2020, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on April 5, 2022.

The hearing was convened by video teleconference on June 21, 2022. Government Exhibits (GE) 1-6 were admitted in evidence without objection. Applicant did not submit any documents at the hearing. After the hearing, I held the record open to provide Applicant with the opportunity to submit documentary evidence. He timely submitted documents that I marked as Applicant's Exhibits (AE) A-F, and admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted all of the SOR allegations. His admissions are incorporated into my findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 38 years old. He has a daughter who is a minor. He was married in 2008, and divorced in 2011. He married his second wife in 2011, and they are in the process of getting a divorce. Since 2017, he has worked as a field technician for a government contractor. He reported on his SCA that he has been steadily employed since 2005, except for one period of unemployment from March to September 2012. (Tr. 10, 38; GE 1, 2).

Applicant stated that he is the only income earner in his family, and that his wife has not consistently worked since they were married. She was not working at the start of their marriage, and since has only held jobs on a short-term basis. He claims that his wife's inconsistent employment history is the reason for his financial problems. He asserted that his debts can be easily managed and solved once his divorce is finalized. He reported that his wife has experienced health problems since they were married, which has resulted in hospital visits and medical bills for her care. (Tr. 18-20, 22-23)

The SOR alleges a 2014 Chapter 7 bankruptcy, and nine delinquent debts totaling about \$45,460. The status of the allegations is as follows:

SOR ¶ 1.a is a 2014 Chapter 7 bankruptcy that had approximately \$63,869 in outstanding liabilities. Applicant stated that this bankruptcy was due to poor management of his finances, and that he had no other solution to resolve his debts at that time. (Tr. 20, 35; GE 1, 2, 3)

SOR ¶ 1.b is a utility account that has been placed for collection for \$210. Applicant claimed that he reached out to the collection agency in 2021, and they had no record of the debt. He asserted that he does not know who is the current credit holder of the debt. He reported that this debt has not been resolved. He did not provide sufficient evidence documenting his communications with the collection agency. (Tr. 24-25; GE 2, 4, 5, 6)

SOR ¶ 1.c is an account for car insurance that has been placed for collection for \$497. In his background interview with a government investigator, Applicant stated that this debt is from a canceled car insurance policy. He told the investigator that he would resolve this debt in 2020. At the hearing, he testified that he has not reached out to the creditor or resolved the debt. (Tr. 25; GE 2, 4, 5, 6)

SOR ¶ 1.d is a charged-off auto loan for a repossessed car in the amount of \$14,327. In his background interview, Applicant stated that he could not afford his car payments because his wife was ill and unemployed, but that he would resolve the debt within the next year. At the hearing, he testified that his last contact with the creditor was in January 2020, and the debt remains unpaid. (Tr. 25-26; GE 2, 4, 5, 6)

SOR ¶¶ 1.e and 1.f are charged-off personal loans for \$2,770 and \$2,043, respectively. In his background interview, Applicant claimed that he took these loans to cover medical expenses for his wife, and he committed to make installment payments to satisfy the loans. At the hearing, he testified that he has not made payments on the loans, and he did not provide documentation of any efforts he took to contact the creditor or resolve these debts. (Tr. 23-24; GE 2, 4, 5, 6)

SOR ¶ 1.g is delinquent car loan in the amount of \$17,879. In his background interview, Applicant stated that the car was totaled in an accident, and his gap insurance should have covered this debt. At his hearing, he claimed that he contacted the gap insurance company in 2020, and he needs to dispute the debt with the credit reporting agency. He did not provide sufficient documentation of his gap insurance claim, his credit report dispute, or any payments made on this debt. (Tr. 28-30, 36; GE 2, 4, 5, 6)

SOR ¶ 1.h is a debt in collection for cellular phones in the amount of \$3,911. Applicant stated that he and his family received the phones from a cellular service provider. When he broke their contract to switch to another service provider, he did not repay the amount that they owed for the phones. This debt has not been resolved. (Tr. 30, 34; GE 2, 5)

SOR ¶ 1.i is a medical debt in collection for \$3,199. Applicant claimed that his debt was for emergency medical care for his wife. He did not explain why her medical debt would appear on his credit report and not hers. He stated that he has not taken any action to resolve this debt. (Tr. 30, 34; GE 2, 5)

SOR ¶ 1.j is a medical debt in collection for \$624. In his background interview, Applicant stated that this debt was for an emergency room visit after he was in a car accident, and claimed that he would resolve this debt in 2020. At the hearing, he testified that he has not taken any action to resolve this debt. (Tr. 30, 34; GE 2, 5)

Applicant provided a budget as part of his post-hearing submission. It shows that he has about \$3,800 of monthly income, and about \$2830 in monthly expenses. Applicant did not provide any information about what happens to his approximate monthly remainder of \$970. At the hearing, he testified that he was not in a position to address his debts, and that he had no savings, and only \$200 in his checking account. (Tr. 30-33; AE A)

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.

The SOR allegations are established by the credit reports, bankruptcy records, and Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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; 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 did not provide sufficient evidence to establish that AG ¶ 20(a) should apply. He did not provide sufficient documentation showing that any of the SOR debts have been paid, or otherwise resolved. His Chapter 7 bankruptcy was only eight years ago, and he is in financial distress again, so it cannot be found that his financial problems are unlikely to recur. The record shows that at this time he is not willing or able to address his debts responsibly. His debts are recent, not isolated, and ongoing. This continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant is given some consideration under AG ¶ 20(b). His wife's medical expenses had an impact on his finances. However, the record shows that all of the SOR

debts are unresolved, and he did not provide sufficient evidence showing that he undertook responsible action to address them. AG ¶ 20(b) does not fully apply.

AG ¶¶ 20(e) potentially applies SOR ¶ 1.g, because Applicant claims that this debt was satisfied by his gap insurance. However, Applicant did not provide documented proof to substantiate the basis of the dispute, or sufficient evidence of actions he took to resolve the issue, so AG ¶ 20(e) does not apply.

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 about Applicant's eligibility and suitability for a security clearance. Applicant has not resolved any of the SOR debts, and did not provide sufficient evidence to mitigate the security concerns arising out his Chapter 7 bankruptcy, and his nine unresolved charged-off and delinquent debts under Guideline F.

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.j:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge