



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



In the matter of:)
)
) ISCR Case No. 21-01769
)
Applicant for Security Clearance)

Appearances

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

08/26/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He filed for bankruptcy protection under Chapter 13 in January 2020, filed for bankruptcy protection under Chapter 7 in 2014, and filed a petition under Chapter 7 in 2001. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 7, 2020. On February 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 Statement of Reasons (SOR) and elected to have his case decided on the written record in lieu of a hearing. He admitted all the SOR allegations without explanations.

Department Counsel submitted the Government's file of relevant material (FORM) on April 7, 2022. Applicant received the FORM on April 20, 2022. He did not provide a response to the FORM. The Government's evidence, included in the FORM, and identified as Items 1 through 8, is admitted without objection.

Findings of Fact

The SOR alleges three separate bankruptcy filings: Chapter 7 in November 2001, Chapter 13 in October 2014 and Chapter 13 in January 2020. (Item 1) Also alleged in the SOR are the 13 individual delinquent accounts included as nonpriority unsecured claims in Applicant's 2020 bankruptcy filing, totaling over \$124,000. (Item 1) Applicant admits to all of the bankruptcy filings and the accounts listed in SOR ¶¶ 1.b through 1.n. His admissions are incorporated into the findings of fact. (Item 2) After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is a 52-year-old employee of a defense contractor. He is married and has six children. (Item 4) He is a naturalized U.S. citizen. (Item 3) He holds an Associate's degree from a community college, which he earned in May 2002. He attended college between April 2004 and September 2010, but did not obtain a degree. (Item 3) He has been employed with his current employer since June 2018. (Item 3) There is no record of unemployment listed on his June 2020 SCA.

Financial

Applicant filed for Chapter 13 bankruptcy protection in January 2020 (1.a). The filing totaled over \$124,000. (Item 6) Applicant completed the required financial counseling. A modified plan was filed on May 14, 2020. The 2020 and 2021 credit reports confirm the delinquent debts. (Items 4, 5) There were three high value vehicles included in the petition and other consumer debts.

Applicant's gross monthly income was listed as \$7,083. The bankruptcy petition notes that Applicant made no payments to any of the creditors the year before filing the 2020 bankruptcy petition. Applicant's total real estate assets were \$525,915. (Item 6) As of the date of the FORM, Applicant's 2020 bankruptcy had not been finalized or a repayment plan implemented. (Item 6)

Applicant disclosed his Chapter 7 filing for bankruptcy petition in October 2014 on his SCA. His debts (\$196,000 in delinquent accounts) were discharged in 2015. (Item 7) He also disclosed his November 2001, Chapter 7 bankruptcy petition. The debts were discharged in 2002. (Item 8)

There is no explanation given by Applicant for the various bankruptcies over the years. He admitted to all the SOR allegations but provided no other information.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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, these guidelines are applied 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.” 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 not drawn 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 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.

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 filed for protection under Chapter 13 bankruptcy in 2020, Chapter 7 in 2014 and 2001. This is a legitimate means to resolve debts but not to avoid making any attempt to pay creditors. AG ¶¶ 19(a) and (c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

None of these mitigating conditions apply to the three petitions for bankruptcy protection. He supplied no evidence or explanation that this was beyond his control or that it is unlikely to occur. The evidence in the record shows a pattern of Applicant having more debts that he could handle. The 2014 Chapter 7 bankruptcy petition includes over \$196,000 in delinquent accounts.

Applicant has presented no evidence that he has any other means of managing his finances and ensuring his financial security except for invoking the bankruptcy option. The record does not present Applicant as one who has the requisite good judgment and reliability needed for access to classified information. There is no evidence that he acted responsibly with his finances. There is nothing in the record to support a conclusion that Applicant made any good-faith efforts to pay or resolve his debts before resorting to bankruptcy.

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. Applicant did not report any unemployment or circumstances that would provide mitigation. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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.p:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge