



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



In the matter of:)
)
) ISCR Case No. 21-02572
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*
08/29/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. He has significant unresolved delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on November 3, 2020. (Item 3) On December 16, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) Applicant provided an undated answer to the SOR, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated March 21, 2022, was provided to Applicant by letter on March 23, 2022. Department Counsel attached as evidence to the FORM Items 1 through 8. Applicant received the FORM on April 7, 2022, and he was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. On June 16, 2021, the case was assigned to me.

Findings of Fact

Applicant is 59 years old. He has been married since 1986, and has four adult children. He received a high school diploma in 1981, and attended one semester of college. He worked for defense contractors since 2005, and he has worked for his current employer, as a plant condition management software operator, since 2015. He has held a security clearance since approximately 2005. (Item 3; Item 4)

The SOR alleges that Applicant has six delinquent debts totaling approximately \$105,816. He admitted all SOR allegations and claimed they were primarily the result of providing financial assistance to one of his adult sons. (Items 2-4)

In 2016 or 2017, Applicant's son was recently married, had two stepchildren, and was struggling to find "decent employment" in State A. Applicant provided financial support to his son's family, including purchasing a home for them in State A. He also co-signed an unsecured loan for his son, a loan which became his sole responsibility after his son filed for (unspecified) bankruptcy protection in April 2018. Due to the other debts that he had, Applicant was unable to pay this obligation. (Items 2-4)

In May 2019, Applicant attempted to resolve his SOR debts through debt consolidation. He made monthly payments of \$1,100 to the debt consolidation company for a year; however, the company stopped accepting payments, and then went out of business at a date unspecified by Applicant. He provided a May 2019 letter from the debt consolidation company but did not provide proof of payments or additional correspondence with the debt consolidation company. In his Answer, Applicant indicated he contacted another debt repair program at an unspecified date, but he could not afford the proposed payments. (Items 2-5)

The debt alleged in SOR ¶ 1.a is for the unsecured loan that Applicant co-signed for his son, as mentioned above. According to the credit bureau reports offered by the Government, this account was opened in June 2017, and became delinquent in September 2019. In November 2019, the creditor sent Applicant an offer to settle the debt for 50% of the outstanding balance of \$39,530. (Items 2-8)

Applicant opened the cash loan alleged in SOR ¶ 1.b in approximately December 2017, his last payment was in May 2019, and the account was charged off in November 2019, for \$24,865. He used this money to help his son, his son was supposed to make payments to him, but he only made a few. (Items 2-8)

Applicant opened the delinquent credit card alleged in SOR ¶ 1.c in October 2008, his last payment was in approximately April 2019, and the account was charged off in approximately June 2020, for \$22,157. The creditor sent him a collection letter in January 2020, and in October 2020, the creditor sued him for the outstanding balance. The status of the case is unspecified from the document provided by Applicant. (Items 2-8)

Applicant opened the credit card or online loan alleged in SOR ¶ 1.d in December 2016, his last payment was in June 2019, and the account was charged off in May 2020,

for \$9,505. Applicant used this money to help his daughter-in-law repair her vehicle. (Items 2-8)

The debts alleged in SOR ¶¶ 1.e and 1.f are both credit card accounts; the former was placed into collections in May 2020, for \$7,628; and the latter was opened in December 2013, and charged off in January 2020, for \$4,319. Applicant received a collection letter and offer to settle the debt alleged in SOR ¶ 1.e for \$4,577. In January 2021, he received an offer to settle SOR ¶ 1.f for \$1,079. (Items 2-8)

Applicant provided no proof of payments or resolution for any of the alleged debts. He does not consider himself to be a security risk. (Item 2; Item 4; Item 5)

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 concern under Guideline F (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

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.

The record evidence of Applicant's delinquent debts establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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;

(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 or provides evidence or actions to resolve the issue.

Applicant has over \$109,000 in delinquent consumer debt. He incurred this debt, in part, to help his adult son's family financially. Applicant stopped paying the alleged delinquent debts in 2019 at the direction of the debt consolidation company he hired in approximately May 2019. According to him, he paid \$1,100 monthly for approximately one year to this company until it stopped accepting his payments and responding to his inquiries. The company later went out of business. He provided no documentation of proof of these payments. Nor has he provided any evidence that he has contacted any of creditors of the SOR debts to establish any other payment arrangements or accept the settlement offers that several of his creditors offered him.

The six alleged debts remain outstanding and unpaid; therefore, Applicant's behavior continues to cast doubt on his reliability, trustworthiness, and good judgement. Additionally, there is limited record evidence that the circumstances in which these debts occurred were beyond his control. He chose to provide significant financial assistance to his adult son, his daughter-in-law, and her two children, despite their apparent lack of ability or desire to repay him or pay their joint obligation. Additionally, once the debt consolidation company went out of business in mid-2020, Applicant did not make any efforts to continue making payments to the creditors of the SOR allegations. The totality of the evidence does not demonstrate he acted responsibly toward his financial obligations that he entered into willingly. Nor has he provided evidence of a good-faith effort to repay or resolve his delinquent debts. The record lacks proof of any payments to either his creditors or to the debt consolidation company. Finally, he provided very limited information from the debt consolidation company; therefore, there is a lack of evidence that Applicant has a reasonable basis to dispute the alleged debts. For the forgoing reasons, Applicant failed to establish mitigation under AG ¶¶ 20.

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 Applicant's lengthy career as a defense contractor and 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. I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge