



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



In the matter of:)
)
) ISCR Case No. 21-00683
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*
10/03/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the security concerns arising from his delinquent debts. He failed to provide supporting documentation demonstrating good-faith efforts to remedy his delinquent finances. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on April 16, 2020. (Item 3) On April 23, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) On May 24, 2021, Applicant provided a response to the SOR, and requested a decision based upon the administrative record (Answer). (Item 1)

A copy of the file of relevant material (FORM), dated March 10, 2022, was provided to Applicant by letter on May 12, 2022. Department Counsel attached Items 1 through 6 as evidence to the FORM. Applicant received the FORM on March 22, 2022, and the cover letter accompanying the FORM stated that 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, 2022, the case was assigned to me.

Findings of Fact

Applicant is 58 years old. He has been with his legal domestic partner for several years. Since April 2003, he has worked for his current federal contract employer as a buyer. He has never held a DOD security clearance. (Item 3)

The SOR alleges that Applicant owes seven delinquent consumer credit-card debts totaling at least \$34,844. (SOR ¶¶ 1.a - 1.g) He disclosed seven delinquent accounts on the April 2020 SCA, and listed that due to his escalating credit card debt, he entered into a four-year agreement with a debt relief company (DRC) to pay-off these debts. The SOR is supported by two credit reports submitted by the Government. (Items 4 and 5)

During Applicant's May 7, 2020 background interview with an authorized DOD investigator, he stated that he entered into the 4-year payment agreement with the DRC in October 2019. He needed to make this financial arrangement after he noticed he could no longer make the minimum monthly payment on his credit cards and his mounting concern as his debt continued to grow. However, after making six monthly payments of \$820, he cancelled the agreement with DRC in April 2020. He told the investigator that he intended to make arrangements with the credit card companies and use any COVID relief offered to manage his debt. During his interview, he acknowledged responsibility for the seven delinquent accounts and asserted that he was willing and able to pay, in full, the outstanding debts. (Item 6)

In Applicant's SOR response, he admitted all seven delinquent credit-card accounts and stated that each account was being disputed with the three reporting credit bureaus. He did not provide an explanation related to the basis for the dispute of each account cited in the SOR. He provided a copy of the correspondence he sent to the three credit reporting bureaus asking that each account be verified and certified by the creditor that the information reported is accurate, or the creditor should remove the adverse information for each account from his credit report.

(SOR ¶ 1.a) Applicant is past due in the amount of \$2,218, with a total balance of \$12,118 owed for a credit card. (Items 1, 2, 3, 4 and 5)

(SOR ¶ 1.b) Applicant is past due in the amount of \$1,798, with a total balance of \$11,090 owed for a credit card. (Items 1, 2, 3, 4 and 5)

(SOR ¶ 1.c) Applicant is past due in the amount of \$752, with a total balance of \$4,479 owed to a bank. (Items 1, 2, 3, 4 and 5)

(SOR ¶ 1.d) Applicant owes \$20,025 for a delinquent credit card account charged off as a bad debt. (Items 1, 2, 3, 4 and 5)

(SOR ¶ 1.e) Applicant owes \$4,941 for a delinquent credit-card account referred for collection. (Items 1, 2, 3, 4 and 5)

(SOR ¶ 1.f) Applicant owes \$4,111 to a bank for a delinquent credit-card account charged off as a bad debt. (Items 1, 2, 3, 4 and 5)

(SOR ¶ 1.g) Applicant owes \$999 to a store for a delinquent credit-card account charged off as a bad debt. (Items 1, 2, 3, 4 and 5)

Applicant cancelled his repayment agreement with DRC in April 2020. He stated in May 2020 that he intended to repay his creditors. Based on his May 2021 SOR response, he admitted each debt but he is now disputing all seven of these accounts. He did not provide an explanation or a legitimate basis for each of the disputes. He did not reply or submit documentation in response to the Government's FORM within the 30-day time period. There is no evidence to show that he paid, is currently in an arrangement to pay, or that he successfully and legitimately disputed each delinquent credit-card account. As such, all of the SOR debts, cited above, are unresolved.

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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record evidence of Applicant's delinquent debt totaling \$25,090, and the credit reports in evidence establish the following disqualifying conditions under AG ¶ 19:

- (a) an 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 did not adequately explain why he was unable to make the minimum payments on his credit-card accounts or if there were any circumstances beyond his control that adversely affected his finances. There is no requirement that an applicant immediately resolve all financial issues or make payments on all delinquent debts simultaneously. Rather, a reasonable plan and good-faith efforts to pay delinquent debts, or resolution of such issues, one at a time, is sufficient. An applicant's mere promises to pay debts in the future, without further confirmed action, are inadequate. There is insufficient assurance or supporting documentation in the record that his financial problems are under control and will not recur in the future.

Applicant bears the burdens of production and persuasion in mitigation. He failed to show that he has paid, is currently paying, successfully disputing, or working with his creditors to establish a payment plan. He did not provide supporting documentation to demonstrate his good-faith efforts to remedy his financial problems. There is insufficient information to determine the current status of his delinquent debts and if he is able to meet future financial obligations. Applicant failed to establish mitigation of the financial considerations security concerns.

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 government 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.

Applicant did not provide an explanation or documentation about why he was unable to provide documented efforts resolving any of the delinquent SOR debts. I conclude Applicant has not met his burden of proof and persuasion.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge