



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



In the matter of:)	
)	
)	ISCR Case No. 21-02429
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not provide documentation to show that he has resolved any delinquent debts. There is not sufficient information in the record to find for Applicant. Eligibility for access to classified information is denied.

Statement of the Case

On December 23, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative 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 SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on May 9, 2022. Applicant received the FORM on May 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 6, is admitted without objection. The case was assigned to me on September 6, 2022. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.a through 1.e with explanations. (Item 2) He is 46 years old, not married with no children. Applicant graduated from the U.S. Military Academy in May 1999, receiving his undergraduate degree. He served as an active duty officer from May 1999 to August 2004. In 2016, he attended a technical school, but did not receive a degree. Applicant has been employed by his current employer since January 2018. He completed a security clearance application on January 23, 2020. Applicant first received a security clearance while serving in the U.S. Army. (Item 3)

Financial Considerations

The SOR alleges that Applicant has five delinquent debts totaling approximately \$50,000 (Item 4) The allegations are supported by his admissions and credit reports. (Items 4, and 5)

In his answer to the SOR, Applicant attributed his financial problems to helping his brother, who was out of work. Applicant was also unemployed in 2016. Applicant was terminated due to a DUI he incurred in 2016. He then worked selling windows and roofs and received commission from August 2017 to January 2018. (Item 3) He earned about \$500 a month. He used a credit card to pay for his living expenses. Applicant reported unemployment from February 2017 to July 2017. He also experienced earlier unemployment for a period in 2011 and 2012.

In his personal subject interview in May 2021, Applicant explained his termination from employment in 2016, a job that did not require a security clearance. Applicant told the investigator and disclosed on his SCA that he was arrested and found guilty of a – first offense DUI in October 2016 and spent time in jail. He had another incident (open container) in September 2018. He successfully completed an alcohol program in 2011. He has never been diagnosed as being alcohol dependent.

Applicant's monthly gross salary is \$7,200. After monthly expenses, his net remainder is \$3,400. He listed a monthly payment of \$238 for one of the SOR debts in his expenses and also listed a car payment. There is no record of financial counseling or a budget.

As to SOR 1.a, a charged-off-account in the amount of \$10,728, Applicant used this credit card to pay for his living expenses. He fell behind in the payments due to unemployment and underemployment. He has not made any payments on the debt. He

stated in his interview that he is waiting to hear from a collection agency. He does not dispute the debt and promised to call the collection company. (Item 6)

As to SOR 1.b, a charged-off-account in the amount of \$9,040, Applicant used this credit card to pay for living expenses during the same time period. He has not made any payments. He promised to call the collection agency and pay the debt. (Item 6)

As to SOR 1.c, a charged-off- account in the amount of \$8,734, Applicant used the credit card for daily expenses. No payments have been made, but he promised to become proactive and try to settle the debt. (Item 6)

As to SOR 1.d, a charged-off-account in the amount of \$8,184, Applicant settled the account and stated that he has been paying \$238 a month. He expects the account to be paid by May 2021. The plan term was two years. He did not present any evidence of the payments.

As to SOR 1.e, a charged-off-account in the amount of \$17,860, Applicant did not know what the account represented. He recalls starting a debt consolidation plan but never completed the process. (Item 6)

The credit report dated December 17, 2020, shows several accounts as “paying as agreed”, or under a partial payment plan. (Item 5) It confirms that Applicant has paid six other accounts that are not listed on the SOR that have been paid in 2019. It also shows that Applicant has been paying on another account under a payment plan and the balance has decreased. (Item 5)

Also, Applicant reported to the investigator that another account SOR (1.c) concerned a short sale that ended in the summer of 2015. Applicant was notified that he no longer had to pay toward the short sale and he was reimbursed a total of \$25,351. (Item 6) There is no evidence in the record to substantiate his claim.

Applicant did not provide any documentation to demonstrate that he is taking steps to resolve his delinquent debts. He intends to pay his debts, and has shown in the past that he could.

Policies

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(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.”

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish disqualifying conditions under the guidelines: AG ¶¶ 19(a) "inability to satisfy debts"), and 19(c) "a history of not meeting financial obligations

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted that he is responsible for the remaining delinquent debts and intends to pay them. Promises to pay in the future are not sufficient for mitigation purposes. Applicant is now earning a salary and experienced some unemployment, but he did not present any evidence to meet his burden of proof. His earlier credit report shows that he had paid some accounts. The Government is not a bill collector. However, Applicant in this case has not shown that he acted responsibly and in good-faith to repay financial obligations. He has not shown the requisite judgment, reliability, or trustworthiness, to have access to classified information. He has not met his burden and none of the mitigating conditions 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. Applicant served in the U.S. military and experienced unemployment and underemployment. Granted he was terminated from his job for a DUI, but he has been consistently employed since 2018. He paid other delinquent accounts that he incurred from loss of employment. However, he has not made sufficient efforts to pay and resolve his debts to mitigate the financial security concerns guideline. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility 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 –1e:	Against Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge