



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



In the matter of:)
)
-----) ISCR Case No. 22-00244
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on March 18, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 5, 2022, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On April 7, 2022, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) in lieu of a hearing. On May 11, 2022, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. On the same day, DOHA sent the FORM to Applicant, who received the FORM on May 19, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. The SOR and the Answer (Items 1S and 1A, respectively) are the pleadings in the case. Items 2 through 5 are admitted without objection. The case was assigned to me on August 4, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 51 years old and a high school graduate with about three years of college credits. He served on active duty in the U.S. Navy from January 1995 until January 1999, when he was honorably discharged. He has been married, since October 2010. He was previously married and divorced, from May 1995 to September 1998 and from September 2000 to April 2008. He has three adult children, two adult stepchildren, and one minor stepson. Since September 2019, he has been employed by a defense contractor. (Items 2 and 5.)

Of financial interest, in 2016, Applicant's spouse lost her job. In September 2018, he became unemployed until February 2019. As a result, he could not make his auto loan payments. Applicant did a voluntary repossession of his auto in March 2020. (Item 5.) The SOR debts were reported in collection status in April or May 2020.

The SOR alleged four delinquent debts totaling \$23,630. (Item 1S.) More specifically, the SOR debts and Applicant's Answers are as follow:

SOR ¶¶ 1.a. and 1.b. are two debts in collection for \$568 and \$623, respectively. (Item 1S.) Applicant admitted these allegations, saying: "[I] will be making arrangements to pay these." Applicant provided no documents in support. (Item 1A.) These debts are not resolved.

SOR ¶1.c. is a debt charged off for \$9,402. (Item 1S.) Applicant admitted this allegation, saying: "Unable to handle at this time." (Item 1A.) Applicant provided no documents in support. This debt is not resolved.

SOR ¶1.d. is a delinquent auto loan charged off for \$12,767. (Item 1S.) Applicant admitted this allegation, saying: "Received 1099C, Cancellation of Debt, that was filed with 2020 Taxes." He provided a copy of the 1099C and a copy of his 2020 federal tax return showing that he declared the cancellation as income. (Item 1A.) This debt has been resolved.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security

determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

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

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

(a) inability to satisfy debts.

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶ 19(a) applies.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and
- (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;

The next inquiry is whether any mitigating conditions apply. At the outset, the Appeal Board has consistently held that an applicant is not required to resolve every debt alleged in the SOR. Nor is there a requirement that SOR debts be resolved first. An applicant need only show by his actions his effort to resolve debts. See, e.g., ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's SOR debts occurred in April and May 2020. That is not very long ago. Nor were those SOR debts infrequent. Because of the frequency and recency of debts, AG ¶ 20(a) does not mitigate his debts.

Most of Applicant's financial problems began between 2016 and 2018, which coincided with two unfortunate developments in his personal and professional life. In 2016, his spouse lost her job. In 2018, he became unemployed for six months, until February 2019. Those are conditions "largely beyond [his] control," within the contemplation of AG ¶ 20(b). That does not, however, end the inquiry.

AG ¶ 20(b) requires that Applicant act "responsibly" under the adverse circumstances he confronted. In this case, he addressed his major creditor first, SOR ¶ 1.d. (\$12,767). He succeeded in having that creditor issue a debt cancellation, which Applicant reported as income in his 2020 federal tax return. That is responsible conduct. AG ¶ 20(d) applies and mitigates this SOR debt.

The Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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:	FOR APPLICANT
Subparagraphs 1.a. – 1.d.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge