



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



In the matter of:)
)
) ISCR Case No. 22-01071
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/19/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 28, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant submitted an undated response to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on July 26, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He responded with a memorandum dated August 10, 2022, which I have marked Applicant’s Exhibit (AE) A. The case was assigned to me on October 3, 2022. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

Findings of Fact

Applicant is a 67-year-old employee of a defense contractor. He has worked for his current employer since June 2021. He has a bachelor's degree awarded in 1976 and a master's degree awarded in 1983. He is married with five adult children. (Item 2)

The SOR alleges seven delinquent debts totaling about \$65,700. The debts are established through Applicant's admissions and a January 2022 credit report. (Items 1-6)

Raising five children was an expensive process, and the balances on Applicant's credit cards and loans slowly increased. He was able to keep the debts current until about 2017, when his son defaulted on a student loan that Applicant cosigned. That caused the interests rates on Applicant's credit cards to rise; he was no longer able to keep them current; and a number of debts became delinquent. (Items 1-6)

Applicant consulted with a debt-settlement company, but the monthly payments on their debt-repayment plan were more than he could afford. He consulted with an attorney on two occasions about filing a Chapter 13 bankruptcy case, but his wife was "dead set against filing for bankruptcy." He also received counseling from the attorney about "other aspects of dealing with a debt situation." He decided that he would "let each creditor file suit against [him] and deal with them on an as-needed, first-come-first-served basis." (Items 1, 4; AE A)

Applicant was sued by several creditors. A bank sued him for about \$2,000 owed on a credit card. In January 2021, he settled the matter for \$1,273, which he paid that same month. A credit union sued him for about \$27,000 owed on a credit card and personal loan. In April 2021, he settled the matter for \$18,000, which he paid the same month. (Items 2-6) These two debts were not alleged in the SOR.

A bank sued Applicant for about \$23,800 owed on a credit card (SOR ¶ 1.b). He settled the matter for \$14,500, payable in monthly payments of \$604, starting in April 2021 and ending in March 2023. (Items 1-6) I am satisfied that Applicant has made the monthly payments, and he will continue to make them until the settlement amount is paid in full.

A collection company sued Applicant for about \$3,150 that was originally owed to a bank (SOR ¶ 1.f). He agreed to settle the matter for \$1,550, payable in full in February 2021. He did not pay the settlement amount because he was short of funds that month. He stated that the "debt collector seems to have forgotten about it, since they've never contacted [him] since to ask where the payment was or to schedule a new payment date. When they do [he] will send them the negotiated settlement amount." (Items 1-6)

Applicant has not paid any of the remaining SOR debts, and he does not intend to pay them. He indicated that he would have found a way to settle the debts if the creditors had filed a lawsuit, but they never bothered to file suit. He stated that the three-year statute of limitations has passed, which means that he "cannot be sued and

the debt becomes uncollectable, leaving no incentive to settle any longer. Without a court judgement, [his] wages cannot be garnished, [his] bank accounts cannot be levied and no liens can be placed on [his] property.” He stated that because the debts are uncollectable, there is “no basis for coercion or compromise.” (Items 1-6; AE A)

Applicant stated that his current financial situation is stable and strong. He has over \$45,000 available in credit on his home equity line of credit. In addition to his salary, he receives \$1,000 per month in pension from a previous employer, and \$2,934 per month in Social Security benefits. (Items 1, 4)

Applicant cites the following as the investigator’s comments in the report of investigation of his background interview: “Subject’s civil suits cannot be used for blackmail”; and “There is nothing in Subject’s background to include any of the above discussed information that could be used to blackmail or coerce him.” (Item 3; AE A) Those are not the investigator’s comments; they are the investigator’s summarizations of Applicant’s answers to the investigator’s questions.

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 security concern 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.

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including multiple delinquent debts. The evidence indicates that it was initially difficult for him to pay his debts, but once the

debts were delinquent for more than three years, he relied on the statute of limitations, and he chose not to pay those debts. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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; and

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

Applicant attributed his financial problems to the expenses of raising five children and his son defaulting on a student loan that Applicant cosigned, which caused the interest rates on his credit cards to rise. His son's actions were beyond his control. AG ¶ 20(b) also requires that "the individual acted responsibly under the circumstances."

Applicant was sued by several creditors. He settled and paid two debts that were not alleged in the SOR; and he settled and is paying the settlement amount to the creditor for the debt alleged in SOR ¶ 1.b. That debt is mitigated.

Applicant agreed to settle the debt alleged in SOR ¶ 1.f, but never paid the settlement amount. He has not paid any of the remaining SOR debts, and he does not intend to pay them. He indicated that he would have found a way to settle the debts if the creditors had filed a lawsuit, but they never bothered to file suit. He stated that the three-year statute of limitations has passed, which means that he "cannot be sued and the debt becomes uncollectable, leaving no incentive to settle any longer." He stated that because the debts are uncollectable, there is "no basis for coercion or compromise."

Applicant may be correct that he is not subject to coercion or compromise, but that is not the only security concern generated by financial problems. The 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).

The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations. That is, a judge may consider the underlying circumstances of these uncollectable debts in evaluating whether an applicant demonstrated good judgment, trustworthiness, and reliability. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). Reliance on the statute of limitations does not constitute a good-faith effort to resolve debts and is of limited mitigative value. See e.g., ISCR Case No. 14-01231 at 3 (App. Bd. Feb. 10, 2015).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of minimal mitigation.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.g:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge