



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



In the matter of:)	
)	
)	ISCR Case No. 21-00946
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2022

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On May 20, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On June 15, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 1, 2022, and the hearing was convened as scheduled on July

22, 2022, using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and the Government's disclosure letter was marked HE II. Applicant testified, but he did not offer any exhibits at the hearing. DOHA received the hearing transcript (Tr.) on August 1, 2022.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 72-year-old employee of a federal contractor with duties as a human resources (HR) generalist. He began working at his present job in July 2019. He served in the U.S. Army from 1972 to 1976, and he received an honorable discharge. He holds a master's degree. He is married for the second time and has three adult children, including two stepchildren. He provided financial support for both his stepson and stepdaughter to attend college, including paying for their student loans. (Tr. 6, 17-18, 21, 26, 29-30, 42-43; GE 1)

The SOR alleged three delinquent accounts (credit cards) totaling approximately \$33,243. The debts are established by credit reports from November 2019, February 2021, and September 2021; Applicant's personal subject interview (PSI) with an investigator in December 2019; his responses to DOHA interrogatories in December 2020; and his SOR admissions (SOR ¶¶ 1.a – 1.c). (GE 2-6; Answer to SOR)

Applicant's financial difficulties began in 2016. He and his wife opened a women's boutique in a small western tourist town in 2014. Applicant was also employed as a consultant with the title of career coach. In 2016, he was grossing about \$65,000 per year from this work. Applicant described the profitability of the business between 2014 and 2017 as making enough money to keep the place open. That changed in March 2016 when Applicant, with very short notice, was laid off from his consulting job. He and his wife scrambled to take several part-time jobs in order to make ends meet. They continued this until approximately May 2017 when they decided to close the boutique. He was hired for an HR position in a different location so they sold their condominium and moved in October 2017. (Tr. 19-20; GE 3; Answer to SOR)

Applicant used credit cards to fund the boutique business. This was necessary in order to pay for new inventory several times a year. The three SOR debts are credit cards used to finance their business. There were at least four other credit cards used by Applicant for the same purpose that also became delinquent, but he was able to settle those debts with the creditors for less than the full amount. These four debts were not alleged in the SOR and will not be considered by me for disqualification purposes, but I may consider the evidence as it relates to the application of any mitigating conditions or during my assessment of the whole-person factors. (Tr. 20; GE 3; Answer to SOR)

The status of the SOR debts is as follows:

SOR ¶¶ 1.a-\$13,380; 1.b-\$11,708; 1.c-\$8,155. All three debts are to the same creditor. Applicant claims he was in contact with this creditor (or the resulting collection companies) at various time between 2017 and 2019. No documentation supports this assertion. He further claims that he offered to settle the debts but the creditor refused his offer by demanding either full payment or monthly payments of \$300 to \$400 on each debt. Applicant stated he could not meet those demands because he was helping to pay for his stepchildren and his wife's college expenses. He has not contacted the creditor since 2019, even though he stated he would do so in his December 2020 response to interrogatories, and in his SOR answer in June 2021. He further stated that he did not use some of the \$110,000 proceeds from the sale of his condominium in October 2017 to pay the SOR debts because he had other priorities, such as paying some of his other debts and paying his stepchildren's college and living expenses. These three debts are still unpaid, and Applicant's plan is to let them fall off his credit report after seven years and take advantage of their unenforceability when the state's statute of limitation for the collection of debts passes. These debts are unresolved. (Tr. 19, 20-21, 26, 33, 40-43; GE 3; Answer to SOR)

Applicant testified that his gross annual income is approximately \$82,000 from his job and \$15,000 from his social security pension. His wife's current income is approximately \$50,000 annually. He recently bought a home and his monthly mortgage payments are \$1,473. He typically has approximately \$500 left over at the end of the month after paying all his bills. He has approximately \$3,000 in his retirement account and his wife has between \$6,000 and \$7,000. They have no other savings account. He is current on all his other debts. There is no evidence of financial counseling. (Tr. 36-39)

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 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, these guidelines are applied 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." In reaching this decision, I have

drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

- (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 incurred three delinquent debts, which he used to fund his boutique business. While Applicant was unable to pay the debts at certain times, since becoming financially solvent, he has been unwilling to pay them. I find all the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's debts are recent because they are ongoing and he has not made any payments toward them. While he may not engage in a retail business again, his inaction towards resolving these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's business failure is a condition beyond his control. However, his choice to pay his stepchildren's college education rather than paying his own delinquent debts was not a condition beyond his control. Additionally, he did not act responsibly concerning the debts when he stopped attempting to work out a payment plan with the creditor, and when he chose not to use some of his condominium-sale proceeds to pay the debts. AG ¶ 20(b) is not fully applicable.

Applicant presented no evidence of financial counseling. Additionally, he stated that his plan to deal with these debts was to do nothing—in other words—he plans to let them become legally unenforceable by operation of law. While this may be an appropriate option to take viewed through a financial prism, it does not equate to acting responsibly

and in good faith and puts into question his reliability, trustworthiness, and good judgment. Applicant's financial problems are not under control. AG ¶¶ 20(c) and 20(d) do not 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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, his business failure, his settlement of at least four non-SOR debts related to his business, and his family circumstances. However, I also considered that he did not attempt to pay his debts after the sale of his condominium and has not taken any other action to resolve his delinquent debt. He has not established a meaningful track record of debt management, and his plan to let the statute of limitations run on his debts causes me to question his reliability and willingness to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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-1c: 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge