



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



In the matter of:)
)
)
)
Applicant for Security Clearance)

ISCR Case No. 21-01279

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

11/04/2022

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 2, 2020. (Item 3) On December 7, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1) The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR and requested a decision on the record without a hearing. (Item 2) Department Counsel submitted the Government’s written case on May 26, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 7. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s

evidence. He received the FORM on June 30, 2022, but he did not provide additional information. The case was assigned to me on September 6, 2022.

Findings of Fact

Applicant, age 46, divorced in May 2017, and has two children from his marriage. In 2012, Applicant obtained an undergraduate degree in criminal justice. He served in the U.S. Marine Corps on active duty from July 1994 until September 2000, receiving an honorable discharge. Applicant also served in the Army National Guard on active duty from February 2002 until December 2015, when he received an honorable discharge. He has worked for his current employer since January 2016. Applicant obtained a security clearance in 2013. (Item 3)

The Statement of Reasons (SOR) sets forth security concerns under Guideline F. The SOR ¶¶ 1.a through 1.h lists eight delinquent debts totaling approximately \$32,000. (Items 4, 5, 6) The delinquent debts include student loan accounts, military consumer accounts, and medical accounts. In his Answer to the SOR, Applicant denied SOR 1.a, through SOR 1.d because he claimed they were paid. He admitted SOR 1.e through 1.h because they were not paid, but he would contact the creditor. He did not provide any other explanations.

In his 2021 DOHA interrogatories, Applicant stated that all the SOR accounts were unpaid, but for some accounts he had made payment arrangements and was making payments. (Item 4) The delinquent accounts appear in his 2020, 2021, and 2022 credit bureau reports. (Items 5, 6, and 7) He provided no documentation to support his claim. He submitted a letter, dated January 26, 2021, with a rehabilitation offer for \$37,220.21, but there is no evidence in the record that he actually started the program. (Item 4)

Applicant submitted a budget revealing a monthly net income of \$6,342, with monthly expenses of \$2,295. These amounts are for alimony/child care and miscellaneous. (Item 4) No debt payments are listed on the budget. There is no information in the record concerning Applicant's financial counseling. He did not report any circumstances beyond his control.

As to SOR 1.a through SOR 1. d, Applicant answered the SOR by stating that he has paid \$23,000 of his student loans, with a balance of \$7,912.97. There was no record of his payments.

As to SOR 1.e, Applicant stated the student loan in the amount of \$4,369 would be paid as soon as possible. There is no documentation to support this claim.

As to SOR 1.f, a charged-off-account in the amount of \$556, Applicant stated that he needed to contact the creditor.

As to SOR 1.g, and SOR 1.h two medical accounts totaling \$580, Applicant stated that he needed to contact the creditor.

Applicant submitted a screen shot, undated for two Stafford loans, one with a balance of \$2,000 and the other with a balance of \$7,912.27 This could be the amount that he currently owes for the student loans, as he answered to the SOR, but it is not possible to conclude without more information. He did not provide any evidence of payments. Any doubts must be resolved in favor of the Government.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 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 two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and, AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of 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.

AG ¶ 20(a) is not established. Applicant has unresolved delinquent debts that are not paid. The debts are recent.

AG ¶ 20(b) is not established. Applicant reported no circumstances beyond his control.

AG ¶ 20(c) and 20(d) are not established. Applicant did not provide any documentation of obtaining financial counseling or evidence of any good-faith efforts to show what he has done to address the debts. He did not provide documentation of any kind to support his claims. That is not sufficient mitigation in this case.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR due to insufficient evidence and documentation. For these reasons, I find he has not mitigated the security concerns under the financial considerations guideline. After considering the mitigating conditions outlined above, none of them apply in this case.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F and in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including Applicant's military service, I conclude that Applicant has not presented evidence of mitigation under the financial considerations guideline. Clearance is denied.

