



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



In the matter of:)
)
) ISCR Case No: 21-02263
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*
11/10/2022

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Financial Considerations guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On October 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). Applicant responded in an October 21, 2021 Response to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing.

On November 29, 2021, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on November 29, 2021, and received by him on January 6, 2022. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant did not file objections to the FORM, submit any additional material for consideration in his case, or request additional time to do either of those things, within the 30-day period following his receipt of the FORM. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. Items 1 through 6 are admitted into evidence.

Findings of Fact

In his Response to the SOR, Applicant admitted the allegations contained in SOR ¶¶ 1.b, 1.c, 1.e, and 1.f. He denied SOR ¶¶ 1.a, and 1.d. His admissions are incorporated into these findings of fact.

Applicant is 32 years old. He earned a high school diploma in May 2009, and a bachelor's degree in September 2020. He served on active duty in the Army from July 2010 to June 2016, when he received an Honorable medical discharge. He held a security clearance during his enlistment that lapsed after his discharge. He and his wife have a nine-year-old child. He was unemployed while attending college from February 2017 to September 2020. During that time, the family was supported by his wife's earnings and his disability payments from the Army, although she had to quit working for an unspecified period due to mental health issues. He is seeking to regain his national security eligibility in connection with the graphic design associate position that he obtained with a defense contractor in November 2020. (Item 3; Item 4.)

As discussed below, Applicant admitted four of the six delinquent debts alleged in the SOR, totaling \$17,078. He said during his December 2020 interview with an investigator from the Office of Personnel Management (OPM) that he had been using a credit monitoring service for the previous two years to help him monitor his debts and to dispute some accounts. He provided no other evidence of progress toward repayment or other resolution of those debts. The debts are listed in record credit reports dated August 17, 2021; and November 18, 2020. (Item 2; Item 4; Item 5; Item 6.)

SOR ¶ 1.a: Applicant denied owing this \$18,645 medical collection account, stating that he had never incurred such a debt and suggesting that it might be the same as the SOR ¶ 1.b debt, to which he admitted. Although reported by the collection agency as a medical debt, I conclude that both of these allegations are based on the same underlying \$12,862 deficiency that resulted from the automobile collateral repossession by a credit union discussed below. The credit reports show this amount to be both the final balance owed to the credit union and the amount of the underlying debt, for which the collection agency subsequently claimed the interest/fee-inflated \$18,645 debt. It is not resolved, but represents a collection agency's acquisition and subsequent reporting of the SOR ¶ 1.b credit union repossession deficiency. (Item 2; Item 4; Item 5; Item 6.)

SOR ¶ 1.b: Applicant and his wife purchased a car for \$36,069 while he was in the Army. They could no longer afford to make the required loan payments after his medical discharge, while using available funds for other priorities. The car was repossessed later

in 2016, and the credit union that made the loan closed the account and charged off the resulting \$12,862 deficiency balance. Applicant admitted this debt, but offered no evidence of any effort to contact the creditor or otherwise resolve it, despite telling the OPM investigator in December 2020 that he would do so immediately. (Item 2; Item 3; Item 4; Item 5; Item 6.)

SOR ¶ 1.c: Applicant took out a personal loan from the Army Air Force Mutual Aid Association while he was still on active duty, but stopped making the \$100 monthly repayments when he was discharged in June 2016. The Association placed the unpaid \$3,504 account balance for collection in September 2018. In December 2020, Applicant said to the OPM investigator that he would contact the collection agency immediately and begin to repay this delinquency. He provided no evidence of any action since 2016 to resolve the debt. (Item 2; Item 3; Item 4; Item 5; Item 6.)

SOR ¶ 1.d: Applicant denied owing an \$1,881 debt to a cell phone company that he told the OPM investigator was incurred when he switched service providers in 2018. However, the relevant credit report entries show that this debt was assigned for collection in February 2014. Applicant provided no evidence supporting a reasonable basis for disputing this debt, or showing other action to resolve it. (Item 2; Item 4; Item 5; Item 6.)

SOR ¶ 1.e: Applicant admitted owing the \$568 credit card debt that was placed for collection in June 2018. Applicant said he chose to stop paying it when he left the Army in June 2016, using his available funds for other purposes. He offered no evidence of any action to resolve this debt. (Item 2; Item 4; Item 5; Item 6.)

SOR ¶ 1.f: Applicant admitted that he owes the \$144 delinquent debt to a pet hospital that was placed for collection in January 2017. He offered no evidence of any action to resolve this debt. (Item 2; Item 4; Item 5.)

Applicant submitted no evidence concerning income from his current DoD contractor position, or of his regular monthly living expenses, to demonstrate his current or foreseeable possibility of financial responsibility. There is no indication he has received legitimate financial counseling or education. The credit bureaus also report that he has approximately \$50,000 in student loan debt in good standing or deferred.

The record contains no evidence concerning Applicant's job performance, trustworthiness, or character in a professional setting. It is also silent with respect to his track record in handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person, since he elected to have his case decided without a hearing.

Policies

The national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, 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 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. 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, an "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 applying for national security eligibility seeks to enter 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 Executive Order 10865, “[a]ny 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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 incurred five delinquent consumer debts totaling about \$19,000 while attending college after his medical discharge from the Army. One of the debts is now held by a collection agency claiming an additional \$5,783 in fees and interest. He demonstrated no effort to repay any of these debts, despite telling the OPM investigator in 2020 that he would do so with the income from his employment with a DoD contractor. Two of these debts involved only \$568 and \$144 but remain unresolved. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial delinquencies:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant failed to establish mitigation under any of these conditions. The multiple delinquent debts of concern are ongoing. His post-Army unemployment was voluntary, while he attended college. During that time, his family lived off his wife's earnings, his disability benefits, and around \$50,000 worth of student loans that also remain outstanding. Applicant offered no evidence of responsible efforts to resolve these delinquencies once he resumed employment in 2020. There are no indications that the problem is being resolved or under control. He admitted incurring these debts, which are fully documented in the record credit reports. He offered no substantiated basis to dispute the cellphone debt that he claimed was not legitimate.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and accountable Army veteran who defaulted on \$19,000 in consumer debt in order to use his income for other priorities while he was voluntarily unemployed to attend college for several years. He demonstrated no attempt, or evident intention, to resolve those debts since he regained employment two years ago. There remains significant potential for pressure, coercion, exploitation, or duress, which is most likely to continue. Applicant failed to meet his burden to mitigate the security concerns arising under the Financial Considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b: (consolidated into one allegation)	Against Applicant
Subparagraphs 1.c through 1.f:	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 or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

DAVID M. WHITE
Administrative Judge