



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



In the matter of:)
)
) ISCR Case No. 19-03887
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On January 28, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on May 26, 2021, and again on September 3, 2021 (Answer). He requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on June 28, 2022.

The hearing was convened as scheduled on October 14, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified but offered no exhibits. During preliminary matters, without objection, the Government withdrew ¶ 1.a. from the SOR. I received a transcript (Tr.) of the hearing on October 21, 2022.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom he has worked since April 2018. He works in aircraft maintenance. He previously worked for the same government contractor from 2007 until 2013. He has an associate's degree. He has been married since 2004. He has three children, ages 19, 18, and 11. (Tr. 14, 21-22; GE 1, 2)

In the SOR, the Government alleged Applicant's six delinquent debts totaling approximately \$19,000. These delinquencies consist of auto loans, personal loans, and a credit card. Applicant admitted all of the SOR allegations with additional comment. His admissions are adopted as findings of fact. (Answer; GE 1-5)

The \$13,737 auto loan alleged in SOR ¶ 1.b has not been resolved. Applicant opened this account in 2015 to purchase a vehicle. The vehicle was repossessed in 2016 a few months after he stopped making payments. He told the investigator during his 2019 security interview that he was making \$100 per month payments on this account. However, he testified that he has not reached out to the creditor to make a payment arrangement on this account and has made no payments on this account after 2016. He provided no documentary evidence of any payments on this account. (Tr. 41-45; GE 1-5)

The \$3,477 auto loan alleged in SOR ¶ 1.c has not been resolved. This account became delinquent in 2014 when Applicant totaled his car and his insurance company did not cover the full amount of the loan. Applicant initially believed that he had GAP insurance on the vehicle but later learned that he did not. In May 2021, Applicant contacted the creditor to make a payment arrangement but he has not made any payments on this account. (Tr. 45-48; GE 1-4)

The \$1,225 credit card alleged in SOR ¶ 1.d has not been resolved. Applicant opened this account in 2013. It has a last activity date of November 2013. He claimed that he paid this account in May 2021 after making monthly payments, but he provided no documents to corroborate this claim. (Tr. 49-51; GE 1-4)

The \$288 personal loan alleged in SOR ¶ 1.e has not been resolved. Applicant opened this account to pay some bills. He opened the account in July 2013 and it became delinquent in September 2013. He claimed that he paid this account in full on an unspecified date, but he provided no documents to corroborate this claim. (Tr. 51-54; GE 2-4)

The \$234 personal loan alleged in SOR ¶ 1.f has not been resolved. Applicant opened this account to pay living expenses in October 2013 and it became delinquent in December 2013. He claimed that he paid this account in full, but he provided no documents to corroborate this claim. (Tr. 54-55; GE 2-4)

The \$36 credit card alleged in SOR ¶ 1.g has not been resolved. Applicant opened this account in March 2017. It has a last activity date of August 2017. He

claimed that he paid this account in full in May 2021, but he provided no documents to corroborate this claim. (Tr. 55-57; GE 2-4)

Applicant attributed his financial issues to his purchase of a healthcare business that did not perform as expected. He and his wife purchased this business in about October 2013. He had some experience in the industry prior to the purchase. He paid about \$25,000 for the business, which he paid in monthly installments. He tapped into about \$10,000 of his retirement savings in order to pay for living expenses until the healthcare business started making some money. He also borrowed money to pay for living expenses. He owned the business for about three years. At some point while they owned it, licensing requirements stalled their ability to earn income. This lack of income and the amount of work the business required led him to sell the business in about 2016 for \$25,000. Despite selling the business, it left him in debt. (Tr. 25-34, GE 1, 2)

After he sold the healthcare business, Applicant continued to work in the healthcare industry, but he earned significantly less money (\$8-\$10 per hour) than he had while working as a government contractor. He claimed that he tried to find a job in aircraft maintenance, but was unable to find one until 2018. Applicant works between 40 and 60 hours per week. He earns \$42.65 per hour and about \$60 per hour for overtime. He has earned between \$40 and \$60 per hour since April 2018. Last year, he took home about \$70,000 and his wife took home about \$12,000. He takes home at least \$5,000 per month. He has about \$200 in a checking account and no money in his savings account. He has a retirement account with a balance of about \$13,000. He pays about \$1,200 per month for his daughter's college expenses. Applicant purchased a new SUV for his wife in 2019 for \$36,000. He pays \$676 per month for this vehicle. Applicant purchased a new vehicle for his daughter sometime in the last two years. His monthly payment on this vehicle is \$421. Applicant was unable to testify accurately what his monthly expenses are or whether he has a budget surplus at the end of each month. He has never taken any credit counseling. (Tr. 24-25, 34-41, 69, 77)

Applicant has at least two additional credit card accounts on which he is delinquent that are not listed in the SOR.¹ He claimed that, in the two weeks prior to the hearing, he made payment arrangements to bring these two accounts current in the future. He was also delinquent on his account for the aforementioned 2019 SUV in July 2022, but claimed he is now current on that account. (Tr. 73-75, 79-80; GE 5)

In May 2021, Applicant sent a letter to Equifax disputing the debts listed in SOR ¶¶ 1.a (withdrawn)-1.c. He did not provide a basis for his dispute. He did not provide evidence of the outcome of his claim. (Answer)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive

¹ Any adverse information not alleged in the SOR, such as Applicant's additional delinquent accounts, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

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; and
- (c) a history of not meeting financial obligations.

Applicant has six debts that he has been delinquent on for years. All of these delinquent debts remain unresolved. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;
- (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.

While he claimed to have paid the debts in SOR ¶¶ 1.d-1.g, Applicant provided no documentary evidence of payments or favorable resolution of any of the SOR debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). He therefore failed to show that he acted responsibly under the circumstances or that he made a good-faith effort to repay or otherwise resolve the SOR debts. His purchase of two new vehicles despite being delinquent on the SOR debts further undermines any claim that he acted responsibly under the circumstances. As he failed to provide a basis for his dispute of SOR ¶¶ 1.b and 1.c, or to provide documentary corroboration that he paid the debts alleged in SOR ¶¶ 1.d-1.g, he has not met the requirements of AG ¶ 20(e).

As the SOR debts are unresolved, and Applicant has two additional credit-card debts on which he is behind, his financial issues are ongoing. I cannot find that they are unlikely to recur. These two new delinquencies, the relatively insignificant amount of money he has in his bank accounts, and his lack of awareness of his overall budget also give me pause about his financial stability. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concerns are not mitigated.

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 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:	Withdrawn
Subparagraphs 1.b-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.

Benjamin R. Dorsey
Administrative Judge