



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



In the matter of:)
)
) ISCR Case No. 20-03266
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, 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 February 22, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided an undated response to the SOR (Answer) and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on August 3, 2022.

The hearing was convened as scheduled on October 19, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant Exhibits (AE) A through H were admitted in evidence without objection. I left the record open after the hearing for the parties to provide post-hearing documentation. After the hearing, GE 7 and AE I were admitted in evidence without objection. I received a transcript (Tr.) of the hearing on October 26, 2022.

Findings of Fact

Applicant is a 61-year-old employee of a government contractor for whom he has worked since June 2018. He has a high school diploma and took some college courses but did not earn a college degree. He was divorced once and has been remarried since 1997. He has two adult children and two adult stepchildren. He served on active duty with the U.S. Army from 1984 until 2003, when he received an honorable discharge. During his military service, he was deployed to active combat zones three times. (Tr. 24-30; GE 1, 2)

In the SOR, the Government alleged Applicant's five delinquent debts totaling approximately \$26,000. These delinquencies consisted of a credit card, personal loans, and telecommunications debts. Applicant admitted all of the SOR allegations with additional comment, with the exception of SOR ¶ 1.c. He denied this debt and claimed that it was a duplicate of another debt alleged in the SOR. His admissions are adopted as findings of fact. (Answer; GE 1-7)

Applicant attributed his financial issues to his employer's loss of a government contract in May 2017 that saw his salary reduced from \$80,000 to \$35,000, annually. As a result of his drop in income, he could not afford to pay all of his creditors and he defaulted on some of his financial obligations. He began working for his current employer in June 2018, and earned about \$50,000 annually. At the time of the hearing, he earned between \$51,000 and \$52,000, annually. He takes home about \$1,700 every two weeks. He also earns \$1,200 per month from his military retirement. His wife earns about \$23,000 to \$24,000, annually. He claimed that once he obtained his current employment, he earned a sufficient income to begin resolving his delinquent debts. In August 2019, he hired a law firm to help him resolve his delinquencies. He claimed that he paid this law firm \$6,000 in monthly installments and that they owe him money back because he paid the debt listed in SOR ¶ 1.b without the law firm's assistance. He claimed that he began resolving his financial delinquencies prior to being evaluated for a clearance. (Tr. 22-23, 30-34, 39, 46-47; Answer; AE A-I; GE 1, 2)

Applicant has no written budget that he follows. He has about \$800 left over at the end of each month after paying his bills that he puts into savings in order to pay off his creditors through the aforementioned law firm. He has about \$4,000 in savings, but does not have a retirement account. He claims he is working very hard to pay his delinquent debts. However, this year, he bought a 2022 truck for about \$70,000 and a 2022 motorcycle for about \$30,000.¹ He claimed that he purchased the truck because he was having mechanical issues with his old vehicle, and he purchased the motorcycle because it gets good gas mileage. He pays \$1,000 per month on the truck and \$600 per month for the motorcycle. (Tr. 42-44, 50-54)

¹ Any adverse information not alleged in the SOR, such as Applicant's spending on motor vehicles or any 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.

The \$14,357 credit card alleged in SOR ¶ 1.a has not been resolved. Applicant opened this account in 2015 to make upgrades on his home and to pay for living expenses. The last payment he made on this account was in November 2017. He had a civil court hearing related to this account scheduled for November 2, 2022. He said that after this date, he will have a better understanding as to how to resolve this account. One of the options he is considering to resolve this account is to allow the statute of limitations to run on it. He also may resolve it through payments. He is allowing the creditor's collection actions to inform him how or whether to resolve this account. (Tr. 34-39; Answer; GE 2, 3, 4, 6, 7; AE A, B, G, I)

The \$6,121 credit card alleged in SOR ¶ 1.b has been resolved. This account became delinquent in 2017, when Applicant suffered a reduction in income. The credit consolidation company helped him resolve this debt through a wage garnishment. The account was settled no later than October 2021. (Tr. 39-41, 47-52; Answer; GE 1-6; AE A, B, D, G)

The \$5,869 credit card alleged in SOR ¶ 1.c has not been established. This debt was held by the same creditor as the debt in SOR ¶ 1.b with a similar balance. The only credit report showing two delinquent accounts to this creditor listed Applicant's collections accounts twice. No other credit report in evidence shows that Applicant has two accounts with this creditor. Throughout the investigation process, Applicant has maintained that he only had one delinquent account with this creditor. Based on the foregoing, I find that the debt listed in SOR ¶ 1.c is a duplicate of the debt described in SOR ¶ 1.b. (Tr. 41, 47-49; Answer; GE 1-6; AE A, B, D, G)

The \$520 telecommunications debt alleged in SOR ¶ 1.d has not been resolved. Applicant claimed that he would eventually settle this debt, but is waiting until after he resolves his other, larger delinquent debts. (Tr. 41, 52-54; Answer; GE 2, 3, 5; AE G)

The \$90 telecommunications debt alleged in SOR ¶ 1.e has been resolved. This account became delinquent when Applicant switched cell phone providers and did not pay the full balance on his former provider's account. He settled this account through payment no later than September 2021. (Tr. 41; Answer; GE 2-6; AE F, G)

Applicant settled a delinquent debt not alleged in the SOR for \$2,000 no later than December 2019. He has an additional delinquent debt not listed in the SOR for about \$6,700 that is the subject of a civil lawsuit. (GE 7; AE B, I)

Applicant called his supervisor as a witness. His supervisor is a facility security officer and a security manager for the government contractor where they both work. Applicant's supervisor interacts with Applicant regularly and he believes Applicant is honest, trusts Applicant's judgment, and believes that Applicant should have a security clearance. (Tr. 58-61)

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

Applicant had four delinquent debts totaling about \$20,000 that he had been delinquent on since about 2017. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

For the aforementioned reasons, the debt in SOR ¶ 1.c has not been established. I find in favor of Applicant with respect to that allegation.

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.

While Applicant has resolved the debts in SOR ¶¶ 1.b and 1.e through payments, the debts in SOR ¶¶ 1.a and 1.d remain unresolved. He also has another delinquent debt that was not alleged in the SOR. His financial issues are ongoing and I cannot find they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose as a result of a loss of employment and underemployment from 2017 until mid-2018. These conditions were beyond his control. He must also show that he acted responsibly under the circumstances with respect to these debts. While he hired a law firm to assist him in settling his delinquencies, he failed to meaningfully address two of the SOR debts (including the largest). Despite having unaddressed SOR and other delinquencies, he also further indebted himself in 2022 for an additional \$130,000 through what can only be described as gratuitous spending. AG ¶ 20(b) does not apply.

Despite resolving two of the SOR debts through payment, Applicant's failure to resolve his remaining SOR and other delinquent debts makes AG ¶ 20(d) only partly applicable. Even if the law firm he hired provided financial counseling and was a legitimate and credible source thereof, the lack of meaningful resolution of his overall delinquencies makes AG ¶ 20(c) inapplicable because he has not shown that his financial problems are being resolved or are under control.

As none of the mitigating factors is fully applicable, Applicant's 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. I have also considered Applicant's military service and his positive character reference from his supervisor.

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
Subparagraphs 1.b-1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For 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