



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



In the matter of:)
)
) ISCR Case No. 21-02203
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On October 13, 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 November 14, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 2, 2022.

The hearing was originally scheduled for October 19, 2022. It was continued at Applicant's request and held as rescheduled on October 26, 2022. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) 1 through 10, which were admitted without objection.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer since about 1997. He seeks to retain a security clearance, which he has held for more than 26 years. He has a bachelor's degree earned in 1988. He is married, with a college-age child and two minor children. (Tr. at 28-30; Applicant's response to SOR; GE 1)

The SOR alleges three unpaid judgments totaling about \$129,810 and three delinquent debts totaling about \$55,850. However, Applicant was only an authorized user of the \$21,370 debt alleged in SOR ¶ 1.b and not legally responsible for the debt. The remaining debts and judgments are established through credit reports, Applicant's admissions, and documents provided by him.

Applicant admitted that he and his wife failed to manage their finances appropriately. They did not communicate about their finances, and when they did, it led to discord. Their children are athletes, and there were costs for traveling to competitions. He and his wife had medical problems. By 2018, he realized that he was financially overextended, and he was getting nowhere by making the minimum monthly payments. He prioritized his debts, keeping current on essential accounts such as his mortgage, and he stopped paying the debts that he deemed to be non-essential. He rejected bankruptcy because he felt responsible for the debts and wanted to pay them eventually. The debts were in Applicant's name, in his wife's name, or joint accounts in both of their names. (Tr. at 19-21, 32-33; Applicant's response to SOR; GE 2-8)

Several creditors filed suit against Applicant and his wife. They paid or settled a number of debts and judgments, including some that were not alleged in the SOR. It is unclear if the debts were paid by Applicant or his wife. It makes little difference for our purposes, and I will refer to all of them as paid by Applicant.

Applicant and his wife were sued by a bank for a debt that was not alleged in the SOR. He paid \$500 toward this debt in November 2019 and another \$500 in June 2020. In September 2020, the bank offered to accept \$4,751 in settlement of the \$10,559 debt. Applicant accepted the settlement and paid that amount to the creditor with a credit card in September 2020. (Tr. at 44-45; Applicant's response to SOR; AE 1, 2)

Applicant paid \$1,158 in November 2020 to a collection company on behalf of a fertility center for bills from 2017, 2018, and 2019. This debt was in his wife's name and was not alleged in the SOR. (Applicant's response to SOR; AE 2)

In December 2020, Applicant paid \$203 in settlement of a \$442 debt to a collection company on behalf of a department store credit card account. This debt was in his wife's name and was not alleged in the SOR. (Applicant's response to SOR; AE 3)

Applicant paid \$465 in March 2021 to a collection company to settle a \$582 debt to a bank. This debt was in his wife's name and was not alleged in the SOR. (Applicant's response to SOR; AE 4)

Applicant paid \$302 in August 2021 to a department store credit card to settle a \$550 debt. This debt was in his wife's name and was not alleged in the SOR. (Applicant's response to SOR; AE 7)

Applicant decided that he would not litigate the remaining lawsuits as the filing fees were about \$200 each time they responded. A collection company on behalf of a bank obtained a judgment of \$22,987 against Applicant and his wife (SOR ¶ 1.e). His wages were ordered to be garnished in August 2020. His pay was garnished \$697 every two weeks. Applicant's December 2020 pay statement showed that \$6,215 had been garnished from his pay year-to-date. His February 2021 pay statement showed that \$2,743 had been garnished from his pay year-to-date. The balance had been reduced to \$18,700 by January 2021; \$11,479 by May 2021; and \$3,769 by December 2021. It was paid in full in 2022. (Tr. at 37, 41-42; Applicant's response to SOR; GE 2, 4-8; AE 8)

The bank that held the \$13,346 debt alleged in SOR ¶ 1.d sued Applicant and his wife for \$13,346 plus \$365 costs. In June 2022, the bank notified the court that Applicant paid the creditor sufficient consideration to satisfy the judgment. (Tr. at 36-37, 41-42; Applicant's response to SOR; GE 2; AE 5)

In December 2021, the bank for the \$21,370 debt alleged in SOR ¶ 1.b (Applicant's wife account) issued an IRS Form 1099-C (Cancellation of Debt) to Applicant's wife, which cancelled or forgave \$19,981 of the debt. The bank considers the debt resolved and listed it on the October 2022 credit report with a \$0 balance. The cancellation affected their taxes for 2021 resulting in a larger than normal tax liability. He paid the IRS \$4,167 in October 2022. (Tr. at 38-39; Applicant's response to SOR; GE 2,4-8; AE 6, 10)

The bank that held the \$88,166 debt alleged in SOR ¶ 1.a obtained a judgment of \$88,166 plus \$406 costs against Applicant and his wife in October 2019. A garnishment order was quashed, but the judgment is still in effect. No payments have been made toward the judgment. (Tr. at 35-38; Applicant's response to SOR; GE 2, 4-8; AE 9)

A collection company on behalf of a bank obtained a judgment of \$18,311 plus \$347 costs against Applicant and his wife in 2020 (SOR ¶ 1.f). The judgment has not been paid. He has not made any payments toward the \$21,135 debt alleged in SOR ¶ 1.c. (Tr. at 39-43; Applicant's response to SOR; GE 2-8)

To summarize, SOR ¶¶ 1.d (\$13,346) and 1.e (\$22,835) were paid by garnishment; 1.b (\$21,370) is Applicant's wife's account and was cancelled by the creditor; and 1.a (\$88,166), 1.c (\$21,135), and 1.f (\$18,659) are unpaid. Applicant also paid about \$7,879 to resolve five debts that were not alleged in the SOR.

Applicant was unable to pay other debts while his pay was being garnished. He then had to save \$4,167 to pay the IRS for the extra taxes that resulted from the 1099-C that cancelled \$19,981 in debt. His finances are improving. His wife inherited \$88,000

and two cars. He has about \$180,000 equity in his house and \$130,000 in retirement accounts. He stated that he plans to pay his debts. (Tr. at 23, 31, 34, 40, 44; Applicant's response to SOR; GE 2)

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 has a history of financial problems, including delinquent debts and unpaid judgments. AG ¶¶ 19(a) and 19(c) are applicable.

Applicant was only an authorized user of the \$21,370 debt alleged in SOR ¶ 1.b and not legally responsible for the debt. SOR ¶ 1.b is concluded for Applicant.

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.

Applicant admitted that he and his wife failed to manage their finances appropriately. They did not communicate about their finances, and when they did, it led to discord. They both had medical problems, and they had expenses related to their children's athletic competitions. Applicant's finances were partially beyond his control.

When the SOR ¶ 1.b debt in his wife's name is eliminated, the remaining debts and judgments totaled about \$164,000 before payments. The judgments in SOR ¶¶ 1.d (\$13,346) and 1.e (\$22,835) were paid by garnishment. Those debts are mitigated. However, court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor himself. See, e.g., ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). Applicant is also credited with paying about \$7,879 to resolve five debts that were not alleged in the SOR. He paid the large tax bill that resulted when a creditor cancelled a \$19,981 debt in his wife's name. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

Applicant still owes about \$127,900 for a delinquent debt and two unpaid judgments. He stated that he plans to pay the debts. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

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." There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. There are no mitigating conditions applicable to the unpaid debt and judgments. Applicant may reach a point where his finances are sufficiently in order to once again warrant a security clearance, but he has not established that he is there at this time.

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 also considered Applicant's long employment record while holding a security clearance.

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

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge