



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



In the matter of:)
)
 -----) ISCR Case No. 22-00011
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

11/23/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his latest security clearance application (SCA) on July 28, 2020. He submitted an earlier SCA on February 10, 2018. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 1, 2022, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On April 25, 2022, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) in lieu of a hearing. On July 18, 2022, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. On the same day, DOHA sent the FORM to Applicant, who received the FORM on July 26, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in the case. Items 3 through 7 are admitted without objection. The case was assigned to me on October 3, 2022

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 41 years old, married (September 2007), with three daughters ages 19, 13, and 7. He earned an Associate's degree in December 2010. He has taken additional college courses beyond that degree. Since April 2020, he has been employed by a defense contractor. (Item 3.)

Applicant reported two periods of unemployment. The latest period was from October 2019 to December 2019. The reason was: "Job offer internally." The longest period was from June 2017 to May 2018. His stated reason was: "Left by mutual agreement following notice of unsatisfactory performance." (Item 3.)

The SOR alleged three delinquent debts totaling \$27,163. (Item 1.) Applicant admitted those three allegations, without explanations or any documents. (Item 2.) More specifically, the SOR debts and Applicant's Answers are as follow:

SOR ¶ 1.a. is an account for delinquent federal taxes of \$17,748 for tax year (TY) 2013. (Item 1.) Applicant admitted this allegation. (Item 2.) In his latest SCA, he stated: "Job loss and trying to catch up on everything on one income . . . Payment Plan." (Item 3.) In his Response to Interrogatories, he stated: "I wasn't aware that my taxes were not being paid. My wife does the taxes with HR Block. I have reached out to the IRS and the state . . . to get tis [sic] resolved in a timely manner via payment plan." (Item 5.) This debt is not resolved.

SOR ¶ 1.b. is an unpaid state tax lien for \$7,466. (Item 1.) Applicant admitted this allegation. (Item 2.) (See Items 3 and 5.) This debt is not resolved.

SOR ¶ 1.c. is a bank account in collection for \$1,949. (Item 1.) Applicant admitted this allegation. (Item 2.) This debt is not resolved.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes the following conditions that could raise security concerns under AG ¶ 19:

- (a) Inability to satisfy debts;

- (c) a history of not meeting financial obligations; and
- (f) failure to . . . pay annual Federal, state or local income tax as required.

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any of the following mitigating conditions apply.

Guideline F includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable here:

- (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 . . .), and the individual acted responsibly under the circumstances); and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The question is whether the quoted mitigating conditions under AG ¶ 20 apply on these facts. Applicant's delinquent SOR debts are substantial and were not infrequent. They persist to this day. Because of the frequency and recency of the debts, AG ¶ 20(a) does not mitigate his debts.

Applicant had a lengthy period of unemployment from June 2017 to May 2018. He candidly gave the reason for his unemployment as being "by mutual agreement following notice of unsatisfactory performance." He attributed his financial problems to that loss of employment. AG 20(b) requires that a loss of employment be "largely beyond" an applicant's control. Here, the reason for his loss of employment is ambiguous at best or unfavorable at worst. Beyond that, AG ¶ 20(b) requires that Applicant act responsibly under the adverse circumstances he confronted. On this record, I cannot find that the conditions were largely beyond his control or that he acted responsibly about his finances. AG ¶ 20(b) does not mitigate his debts.

In two instances, Applicant referred to a payment plan to resolve his tax delinquencies. He did not, however, produce a documented plan or documents of payments made under such a plan. The Appeals Board has routinely held that it is reasonable to expect applicants to produce documentation supporting their efforts to resolve debts. See, e.g., ISCR Case No. 20-00615 at 2 (Jun. 7, 2021).

Applicant has not satisfied that longstanding requirement. AG ¶ 20(g) does not mitigate his debts.

I find against Applicant on SOR ¶¶ 1.a. through 1.c.

The Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.a. – 1.c.:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge