



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



In the matter of:)	
)	
)	ISCR Case No: 22-00416
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
 For Applicant: *Pro se*
 11/01/2022

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns, but he mitigated the personal conduct security concerns. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On March 21, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant responded in a March 29, 2022 Answer to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing.

On May 16, 2022, 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 May 18, 2022. The FORM notified Applicant that he had an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns within 30 days of receipt of the FORM. Applicant received the FORM on July 28, 2022. He did not respond. On October 3, 2022, the Defense Office of Hearings

and Appeals (DOHA) assigned the case to me. I received the case file on October 11, 2022. Items 1 through 6 are admitted into evidence.

Findings of Fact

In his Answer, Applicant admitted all allegations contained in SOR ¶¶1.a through 1.n, and denied the allegation in SOR ¶ 2.a, with explanations. His admissions and explanations are incorporated into these findings of fact.

Applicant is 35 years old. He is married and has four children. In April 2016, he began a position with a defense contractor. In September 2021, he submitted his first security clearance application (SCA). In it, he disclosed periods of unemployment from November 2011 to June 2012, December 2010 to March 2011, and from December 2009 to January 2010. (Item 3)

Financial Considerations

As part of its background investigation, the Government obtained Applicant's credit bureau report (CBR) in October 2021. Thirteen delinquent debts and an April 2013 Chapter 7 bankruptcy were reported on it. The bankruptcy entry noted that \$35,777 of debt was discharged in the bankruptcy. (Item 6) Subsequently, the Government requested that Applicant complete interrogatories inquiring into the status of those 13 delinquent debts. Applicant completed the interrogatories and submitted them to the Government on "January 21, 2021." (Item 4 at 11) (The year should have been noted as 2022 and not the preceding year of 2021 at which time Applicant had not submitted a SCA.)

In addition to addressing the status of the debts in the interrogatories, Applicant explained that his wife was unemployed when he stopped making payments on the debts. (Item 4 at 7) He included a copy of his January 2022 budget, which indicated that his net monthly income was \$9,127 and his expenses were \$7,091. He has about \$1,056 remaining at the end of the month. The budget included monthly payments on five debts that total \$980, the largest one being an automobile loan. None of the five debts noted in the budget were alleged in the SOR. (Item 4 at 9)

Based on the October 2021 CBR, the March 2022 SOR alleged the 2013 bankruptcy and the 13 delinquent debts included in Applicant's interrogatories. The debts totaled \$42,028 and became delinquent between 2018 and 2021. They remain unresolved. (Item 6)

Personal Conduct

The SOR alleged that Applicant deliberately failed to disclose delinquent financial accounts in his September 2021 SCA. Applicant denied that he intentionally failed to disclose that information. In his Answer, he stated he was confused by the financial

questions and thought the inquiry was limited to delinquent accounts in the past seven years that were not listed on his credit record. He said he did not attempt to hide his debts or information from the government. (Item 2)

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 concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and

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

Applicant has a history of delinquent debts. In 2013, he filed a Chapter 7 bankruptcy and discharged \$35,777 of debt. Between 2018 and 2021, he incurred more than \$42,000 in delinquent debts that he has been unable to resolve. 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 also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 persons 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's delinquent debts, totaling over \$42,000, are recent and ongoing. He failed to establish mitigation under AG ¶ 20(a). His periods of unemployment and the loss of his wife's income may have been circumstances beyond his control; however, he did not present evidence that he attempted to responsibly manage those debts while they were accumulating or after he resumed employment. AG ¶ 20(b) partially applies. There is no evidence that he participated in credit or budget counseling. There are no clear indications that any of the debts are being resolved through payment plans or are under control. Although his budget includes payments on five financial accounts, none of those accounts appears to be included in the SOR. The record does not establish mitigation under AG ¶¶ 20(c) and 20(d).

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise security concerns and may be disqualifying under the facts alleged in the SOR:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he did not disclose his 13 delinquent debts in his September 2021 SCA, but denied that he deliberately omitted them with intent to deceive. He stated that he was confused by the language of the questions and the timeframe of seven years. In January 2022, he answered interrogatories inquiring about the status of the 13 delinquent debts that were reported on his October 2021 CBR and subsequently alleged in the March 2022 SOR. Based on his denials, his confusion in understanding the financial questions in the SCA, and his complete answers to the interrogatories, there is insufficient evidence to conclude that he deliberately concealed information from the government. He sufficiently refuted the allegation under this guideline.

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 experienced financial problems prior to filing his 2013 Chapter 7 bankruptcy, and again about five years later. Although he provided a budget that indicates he has money remaining at the end of the month, there is no evidence that he is using some of it to resolve his delinquent accounts. He did not submit evidence of financial or credit counseling. At this time, he has not established a track record of addressing delinquent debts and managing financial obligations. The evidence leaves me with questions and concerns as to Applicant's present eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. He refuted those concerns alleged under Guideline E, personal conduct.

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 through 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 Applicant eligibility for access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge