



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



In the matter of:)	
)	
)	ISCR Case No. 22-00913
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
 For Applicant: *Pro se*
 11/18/2022

Decision

GARCIA, Candace Le’i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On June 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on July 18, 2022 (Answer), and elected to have his case decided on the written record in lieu of a hearing. The Government’s written case was submitted on August 31, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and submitted a response on October 4, 2022 (FORM Response). The case was assigned to me on November 3, 2022. The Government’s documents

identified as Items 1 through 10 in its FORM, and Applicant's FORM Response, are admitted in evidence without objection.

Amendment to the SOR

In its FORM, the Government amended the SOR (amended SOR) to add allegations numbered SOR ¶¶ 1.g and 1.h under Guideline F. Applicant did not admit or deny SOR ¶¶ 1.g and 1.h in his FORM Response. As such, I am construing Applicant's silence as denials of SOR ¶¶ 1.g and 1.h.

Item 7 reflects that a state tax warrant, not a state tax lien, of \$3,513 was entered against Applicant in 2017 by state D. I hereby *sua sponte* amend SOR ¶ 1.g, pursuant to ¶ E3.1.17 of the Directive, to strike the word "lien" and replace it with "warrant."

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.f in his Answer. Applicant is 47 years old. He married in 2007, divorced in 2010, remarried in 2018, and divorced in 2021. He has three children--two minors and one adult. He resided in state A, in a home he purchased, from October 2014 to March 2016. He lived in state B from March 2016 to May 2017. He then resided in his home in state A from May 2017 to August 2021, when he sold the home as part of his second divorce. As of his December 2021 background interview, he lived in state C since September 2021. (Answer; Form Response; Items 3, 4, 9)

Applicant obtained his high school diploma in 1994. He earned a certificate from a college of aeronautics and technology in April 2014 and an associate degree in June 2019. He was consistently employed since 2007, but he voluntarily resigned in April 2017 from a managerial position that he had held since September 2014. As of his December 2021 background interview, he worked for his employer, a DOD contractor, since September 2021. He has never held a security clearance. (Items 3, 4, 9)

The SOR and amended SOR allege that Applicant had six delinquent consumer debts totaling \$39,894, a state tax warrant entered against him by state D in 2017 for \$3,513, and a state tax lien entered against him by state B in 2018 for \$1,176 (SOR ¶¶ 1.a-1.h). Applicant listed and discussed his delinquent debts on his November 2018 security clearance application (SCA) and during his January 2019 and December 2021 background interviews. SOR ¶¶ 1.a through 1.f are reported on credit bureau reports from September 2021 and April 2022. Court documents reflect the state B tax lien in SOR ¶ 1.h and the state tax warrant in SOR ¶ 1.g. (Items 3, 4, 5, 6, 7, 8, 9)

Applicant attributes his financial issues to his second spouse's overspending, his second divorce, and the consequent child-care expenses for his two minor children. In addition, he experienced a decrease in income after he voluntarily resigned from his managerial position in April 2017, as previously discussed. He again experienced a decrease in income due to reduced work as a result of the COVID-19 pandemic. His

finances were further affected when he relocated from state A to state C in September 2021 for employment. (Answer; FORM Response; Items 3, 4, 9)

Applicant stated in his SCA and during his January 2019 background interview that he began working with a credit counseling service (Company A) to resolve his outstanding debts. He entered into a debt repayment plan with Company A in November 2018, of \$295 monthly for 77 months, to resolve his outstanding debts. He did not provide documentation to show that he made any payments into his plan with Company A. He indicated during his December 2021 background interview that he retained a debt settlement law firm (Company B) to assist him with contacting his creditors, negotiating settlements, and facilitating his payments after settlement. He stated in his Answer and FORM Response that he mistakenly believed that Company A and Company B would assist him with resolving his outstanding debts. He hired an attorney in July 2022 to assist him with contacting his creditors and negotiating settlements, as further discussed below. (Answer; FORM Response; Items 3, 4, 9, 10)

SOR ¶ 1.a is for a \$9,796 collection account. Applicant indicated during his December 2021 background interview that he believed this debt was related to SOR ¶ 1.c. He did not provide documentation to corroborate his claim. He stated in his Answer that he was working with the creditor to verify this debt. As of July 2022, his attorney was assisting him with resolving this debt. (Answer; FORM Response; Item 4)

SOR ¶¶ 1.b and 1.d are for two credit cards with the same creditor, in collection for \$8,478 and \$7,842, respectively. Applicant used these credit cards for personal purchases. As of July 2022, his attorney was assisting him with resolving these debts and offered the creditor a settlement of \$5,000, payable at \$208 monthly over 24 months. There is no evidence that the creditor accepted Applicant's offer. (Answer; FORM Response; Items 4, 9)

SOR ¶ 1.c is for a \$7,968 retail store credit card in collection. Applicant used this retail store credit card for personal purchases. As of July 2022, his attorney was assisting him with resolving this debt. (Answer; FORM Response; Items 4, 9)

SOR ¶ 1.e is for a \$4,168 collection account. Applicant used this credit card for personal purchases. He stated in his Answer and FORM Response that he contacted the creditor and reached a payment arrangement of \$98 monthly for 12 months to settle this debt. He stated in his FORM Response that he made three payments in accordance with this arrangement. He did not provide documentation to corroborate his claim. (Answer; FORM Response; Items 4, 9)

SOR ¶ 1.f is for a \$1,642 collection account. Applicant used this credit card for personal purchases. An IRS-Form 1099 C reflects that the creditor cancelled this debt, in the amount of \$1,785, in August 2021. (Answer; FORM Response; Item 4)

SOR ¶¶ 1.g and 1.h are for the \$3,513 tax warrant entered against Applicant by state D in 2017, and the \$1,176 tax lien entered against him in 2018 by state B.

Applicant's admissions and the court records are the only evidence in the record of the tax warrant and the tax lien. Applicant indicated during his January 2019 background interview that he received a letter in approximately January 2019 informing him that he owed approximately \$1,400 in back taxes. He did not indicate which state informed him of his back taxes. He indicated that he was unaware that he owed back taxes until he received this letter, and that he planned to set up a payment plan to resolve his back taxes. He did not provide any documentation of his efforts to resolve SOR ¶ 1.g. Although he stated in his FORM Response that he paid \$1,786 toward SOR ¶ 1.h and he intended to continue to pay his remaining balance, he did not provide documentation to corroborate his claim. (FORM Response; Items 7, 8, 9)

Applicant indicated during his December 2021 background interview that his monthly net income was \$5,200 since he began working for his employer in September 2021. After expenses, his monthly net remainder was approximately \$400, which he sets aside as savings to utilize to resolve the settlements reached for his debts. He received his aviation mechanic certificate in 2012. (Items 3, 4)

Policies

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 access to classified information 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (a) inability to satisfy debts; and

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

Applicant has a history of not paying his debts. Applicant AG ¶¶ 19(a) and 19(c) are established.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

(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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. An IRS Form 1099-C reflects that the creditor cancelled the debt in SOR ¶ 1.f in August 2021, and I find that allegation in Applicant's favor.

Applicant began trying to resolve his debts in November 2018, when he entered into a debt repayment plan with Company A. However, he did not provide documentation to show that he made any payments to Company A as part of that plan. Although he indicated during his December 2021 background interview that he subsequently retained Company B to assist him with resolving his debts, he also did not provide any documentation to corroborate his claim. As of July 2022, his attorney was assisting him with resolving SOR ¶¶ 1.a through 1.d. While his attorney made an offer of settlement for SOR ¶¶ 1.b and 1.d, there is no evidence that the creditor accepted this offer. Applicant also did not provide documentation to corroborate his claim that he entered into a payment arrangement for SOR ¶ 1.e and made three payments accordingly. He also did not provide documentation to corroborate his claim that he paid \$1,786 toward SOR ¶ 1.h, or of his efforts to resolve SOR ¶ 1.g. There is no evidence that he received any financial counseling. I find that Applicant's financial difficulties continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not applicable as to SOR ¶¶ 1.a through 1.e, 1.g, and 1.h.

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 the 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated 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
Subparagraphs 1.a - 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g - 1.h:	Against 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 a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge