



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



In the matter of:)
)
) ISCR Case No. 20-01470
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: Paul Bartels, Esq.

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 August 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 September 7, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 19, 2022.

The hearing was convened as scheduled on November 10, 2022. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since about 2020. He served on active duty in the U.S. military from 2003 until he was honorably discharged in 2007. He has worked continuously for defense contractors on the same military installation since his discharge from the military. He seeks to retain a security clearance, which he has held since the military. He has taken college courses but has not earned a degree. He is married with an infant child and two stepchildren. (Tr. at 10-15, 38; Applicant's response to SOR; GE 1)

The SOR alleges delinquent credit card accounts of \$50,843 and \$9,871. The debts are established through credit reports and Applicant's admissions.

Applicant accumulated the debts up through about 2016, when he stopped paying them. He admitted that he made poor financial choices and lived beyond his means. He vacationed in foreign countries in 2010, 2011, March 2013, and August 2013. He was arrested for driving under the influence (DUI) in 2013.¹ He had to pay more than \$10,000 in fines and attorney fees. (Tr. at 18-19, 24-25, 28-29; Applicant's response to SOR; GE 2-4)

Applicant has not made any payments toward the debts since 2016. He stated that he contacted the creditors several times, but their settlement offers were far more than he could afford. He planned to pay the debts from the proceeds from the sale of his condominium. He netted about \$50,000 from the sale, but his wife was unable to find employment due to the COVID-19 pandemic, and they needed the money for expenses. (Tr. at 14, 20, 23-28, 37-39; GE 2-4)

Except for the unpaid SOR debts, Applicant's finances have improved. His wife is working. He receives \$301 per month in disability pay from the Department of Veterans Affairs (VA). His wife maintains a budget for the family. He has not accrued any new delinquent debt. He has a surplus at the end of the month. He asserted that he plans to resolve the two SOR debts. He has been saving money, which he hopes to use to settle the debts. (Tr. at 13-17, 20-23, 26-36; GE 2-4)

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.

¹ The DUI was not alleged in the SOR, and it will not be used for disqualification purposes. It may be considered for its effect on Applicant's finances, in the application of mitigating conditions, and in the whole-person analysis.

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 and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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 made poor financial choices. He vacationed in foreign countries in 2010, 2011, March 2013, and August 2013. He was arrested for DUI in 2013, which cost him more than \$10,000 in fines and attorney fees. He netted about \$50,000 from the sale of his condominium, which he planned to use to pay his debts, but his wife was unable to find work because of the COVID-19 pandemic.

Applicant's finances have improved. His wife is working. He has not accrued any new delinquent debt. He receives about \$301 per month in disability pay from the VA, and he has a surplus at the end of the month. He has been saving money, which he plans to use to settle the SOR 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).

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 applicable mitigating conditions.

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 honorable military service.

