



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



In the matter of:)	
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)	ISCR Case No. 21-00181
Applicant for Security Clearance)	

Appearances

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

11/18/2022

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 security clearance application (SCA) on September 1, 2020. The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on October 20, 2021, detailing security concerns under Guideline F, financial considerations. The DCSA 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 December 6, 2021, 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 April 25, 2022, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. On April 26, 2022, DOHA sent the FORM to Applicant, who received the FORM on May 18, 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 6 are admitted without objection. The case was assigned to me on September 6, 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 51 years old, has been married since January 2001, and has a daughter 15 years old. He became unemployed in July 2019, when his employer went out of business. He subsisted on state unemployment benefits until he found a new job in October 2019. The record does not show that his unemployment contributed to his SOR debts. Since August 2020, he has been employed by a defense contractor. (Items 3 and 4.)

The SOR alleged seven delinquent debts totaling \$28,019. (Item 1.) Applicant admitted four of those allegations, SOR ¶¶ 1.a., c., f., and g., totaling \$11,096. He denied three of those allegations, SOR ¶¶ 1.b., d., and e., totaling \$16,923. (Item 2.) More specifically, the SOR debts and Applicant's Answers are as follow:

SOR ¶ 1.a. is an account past due for \$599 with a total balance of \$642. (Item 1.) Applicant admitted this allegation. (Item 2.) This debt is not resolved.

SOR ¶ 1.b. is an account charged off for \$16,431. (Item 1.) Applicant denied this allegation, saying: "I deny. I am in a class action lawsuit over this." (Item 2.) Applicant provided no documents in support. This debt is not resolved.

SOR ¶ 1.c. is an account in collection for \$2,166. (Item 1.) Applicant admitted this allegation. (Item 2.)

SOR ¶ 1.d. is an account in collection for \$395. (Item 1.) Applicant denied this allegation, saying: "I deny. They were given 1 weeks notice to pick up a cable box and never showed up. Box was left with property manager." (Item 2.) Applicant provided no documents in support. This debt is not resolved.

SOR ¶ 1.e. is an account in collection for \$187. (Item 1.) Applicant denied this allegation, saying: "I deny. First I am hearing of this." (Item 2.) Applicant provided no documents in support. This debt is not resolved.

SOR ¶ 1.f. is an account in collection for \$133. (Item 1.) Applicant admitted this allegation, saying: "I admit, though I believe I have paid this off." (Item 2.) Applicant provided no documents in support. This debt is not resolved.

SOR ¶ 1.g. is an account charged off for \$8,155. (Item 1.) Applicant admitted this allegation. (Item 2.)

Each SOR allegation is supported by the September 10, 2020 credit report. (Item 5.) Only SOR ¶¶ 1.a. and c. are reported delinquent on the April 26, 2022 credit report. The other SOR debts are not reported at all. (Item 6.) Six of the seven SOR debts were reported in collections in August 2020. (Item 5.) In his Personal Subject Interview (PSI), he said that he was unaware that the accounts in question were delinquent. (Item 4.)

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 a condition that raises a security concerns under AG ¶ 19. The SOR debts established by Applicant's admissions and the Government's credit reports show that AG ¶ 19(a) applies (inability to satisfy debts).

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. The following two 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; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The question is whether mitigating condition AG ¶ 20(a) applies on these facts.. Almost all of Applicant's SOR debts went into collections in August 2020. That is not very long ago. Nor were those SOR debts infrequent. And they persist to the present. Because of the frequency and recency of the debts, AG ¶ 20(a) does not mitigate his debts.

Applicant denied three of the SOR debts. AG ¶ 20(e) on its face requires "documented proof" and "evidence." He did not, however, provide any documented proof or evidence supporting his three denials. 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. His SOR debts have not been mitigated under AG ¶ 20(e). I find against Applicant on SOR ¶¶ 1.a. through 1.g.

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.g.:	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