



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



In the matter of:)
)
) ISCR Case No. 21-00951
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 3, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on February 18, 2022 and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on September 2, 2022.

The hearing was convened as scheduled on October 27, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant did not offer any documents as evidence at the hearing. I left the record open after the hearing until November 10, 2022, for the parties to provide post-hearing documentation, but no additional documents were offered. I received a transcript (Tr.) of the hearing on November 3, 2022.

Findings of Fact

Applicant is a 38-year-old employee of a government contractor for whom he has worked since May 2021. He has a high school diploma and took some technical courses in 2014 and 2015, but did not earn an additional degree. He was married in 2007, but he has been separated from his spouse since 2012. He has two children (ages six and two) with his current partner, with whom he has resided since about 2018. He served on active duty with the U.S. Marines from 2003 until 2011, when he received an honorable discharge. (Tr. 17-20, 46, 49; GE 1, 2)

In the SOR, the Government alleged Applicant's six delinquent debts totaling approximately \$53,000. These delinquencies consisted of automobile loans, a telecommunications debt, and a utility debt. Applicant admitted all of the SOR allegations with additional comment. His admissions are adopted as findings of fact. (Answer; GE 1-5)

Applicant attributed his financial issues to a lack of employment and his 2012 separation from his estranged spouse. He had a break in employment from May 2019 until December 2019. He has been employed since December 2019 and earns about \$80,000 annually. He worked as a government contractor in Country A from 2019 until about May 2021. His girlfriend, with whom he shares income and expenses, earns about \$2,200 per month since March 2022. From 2017 until 2018, he hired and paid a debt consolidation company to help him resolve his delinquencies. He stopped using this company because he was not happy with the work they were doing. When he returned to the U.S. from Country A, he had about \$17,000 to \$18,000 in his savings account, some of which he claimed he used to pay his delinquencies. At the hearing, he claimed that he had about \$2,000 in his savings account. He claimed he saves about \$1,000 per month after paying all his bills, but does not follow a written budget. (Tr. 19-21, 24-25, 39-41, 46, 49-50; Answer; GE 1, 2)

The \$12,120 automobile loan alleged in SOR ¶ 1.a has not been resolved. Applicant opened this account in 2017 to purchase a vehicle on credit. Because of a lack of employment, he could not afford the monthly payments. The last payment he made on this account was in December 2018. At about this time he voluntarily surrendered the vehicle. In the beginning of 2020, he contacted the creditor to make a payment arrangement, but was unable to come to an agreement on one. (Tr. 21-24, 39; Answer; GE 2-5)

The \$10,015 automobile loan alleged in SOR ¶ 1.b has not been resolved. Applicant co-signed on this account to purchase a vehicle for his estranged spouse in 2011. He has disputed this debt because he believes his wife should be responsible for it and because the debt was old. The separation agreement between him and his estranged spouse does not provide that his estranged spouse is solely responsible for this debt. Applicant is jointly and severally responsible for the debt. He has not made any payment arrangements or payments on this debt after it became delinquent. (Tr. 30-34, 39; Answer; GE 2-4)

The \$6,828 automobile loan alleged in SOR ¶ 1.c has not been resolved. At the hearing, Applicant disputed owing this debt because he believed his estranged wife should be responsible for it. He provided no evidence that any separation agreement provided that his estranged spouse is solely responsible for this debt. At hearing, he testified that he did not know about this debt, but during his 2019 security interview, he told an investigator that it was for an auto loan and that he and his estranged spouse purchased the vehicle. He and his estranged wife are jointly and severally liable for the debt. He has not made any payment arrangements or payments on this debt after it became delinquent. (Tr. 34-37, 39; Answer; GE 2-4)

The \$885 telecommunications debt alleged in SOR ¶ 1.d has not been resolved. This debt is Applicant and his estranged spouse's joint debt. Applicant claimed that he paid this debt in about August 2021, but he provided no documentation to corroborate this claim. (Tr. 37, 39, 50; Answer; GE 1-3)

The \$469 utility debt alleged in SOR ¶ 1.e has not been resolved. Applicant claimed that he paid this debt in about August 2021, but he provided no documentation to corroborate this claim. (Tr. 37-39, 50-51; Answer; GE 3-5)

The \$23,115 automobile loan alleged in SOR ¶ 1.f has been resolved. Applicant fell behind on his payments on this account in 2018 and voluntarily surrendered it. He settled this account in April 2021 by paying the creditor a lump sum of \$4,800. (Tr. 25-30, 39; GE 1-5)

Applicant purchased a vehicle in May 2021 for about \$8,000. In October 2021, he traded this vehicle in for the purchase of another, used vehicle. He makes payments of about \$445 per month on the vehicle he purchased in October 2021. The balance on this account was about \$16,400.¹ (Tr. 45-48; GE 5)

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.

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.

¹ Any adverse information not alleged in the SOR, such as Applicant's purchase of a vehicle, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

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 had six delinquent debts totaling about \$53,000 that he has been delinquent on for years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

Applicant satisfied the debt in SOR ¶ 1.f through a lump sum payment prior to the issuance of the SOR. I find in favor of Applicant with respect to that allegation.

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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

While Applicant has resolved the debt in SOR ¶¶ 1.f through payment, he has not provided sufficient evidence that the other SOR debts are resolved. His financial issues are ongoing and I cannot find they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose as a result of a loss of employment. These conditions were beyond his control. However, he must also show that he acted responsibly under the circumstances with respect to these debts. While he hired a debt consolidation company from 2017 to 2018 to assist him in settling his delinquencies, he failed to provide sufficient evidence that he meaningfully addressed all but one of the SOR debts. Despite having unaddressed financial delinquencies, he spent about \$8,000 to purchase a vehicle in 2021. AG ¶ 20(b) does not apply.

Despite resolving one of the SOR debts through payment, Applicant's failure to provide sufficient evidence that he resolved his remaining SOR debts makes AG ¶ 20(d) only partly applicable. Even if the debt consolidation company he hired provided financial counseling and was a legitimate and credible source thereof, the lack of meaningful resolution of his overall delinquencies makes AG ¶ 20(c) inapplicable because he has not shown that his financial problems are being resolved or are under control.

Applicant disputed owing some of the SOR debts. One basis for his dispute was that he thought his estranged wife should be responsible for the debts. However, the evidence is that Applicant is jointly and severally liable for any debts that he claimed his wife is responsible. Another basis Applicant provided to dispute his SOR debts is that the debts are old. There is insufficient evidence to show that the statute of limitations has run on any of the SOR debts. Regardless, the Appeal Board has "held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value." ISCR No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (citing ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008)).

Finally, Applicant claimed that he does not think he owes the debts in SOR ¶¶ 1.c and 1.d because he thinks he paid the debts in full. However, he provided no evidence that he disputed the debt with the creditor or credit reporting agencies or that he otherwise attempted to resolve the debt. He also provided no documentary proof of payment. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). As the bases of his disputes are not reasonable or are not substantiated by documented proof, AG ¶ 20(e) does not apply.

As none of the mitigating factors is fully applicable, Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concerns are not mitigated.

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 have also considered Applicant's military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge