



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



In the matter of:)	
)	
)	ISCR Case No. 21-01755
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, 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 April 1, 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 May 23, 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 15, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant on August 17, 2022, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 24, 2022. He did not submit a response. The case was assigned to me on November 3, 2022. The Government's

documents identified as Items 1 through 5 in its FORM are admitted in evidence without objection.

Amendment to the SOR

I hereby *sua sponte* amend the SOR, pursuant to ¶ E3.1.17 of the Directive, to correct the caption of this case from ISCR Case No. 21-01730 to ISCR Case No. 21-01755.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.f in his Answer. He is 48 years old. He married in 1994, divorced in 1995, remarried in 2000, and divorced in 2005. He has one child, a minor. He has owned his home since April 2009. He served in the U.S. military from May 1992 to May 1997, when he was honorably discharged. As of his December 2020 security clearance application (SCA), he worked as a system engineer for his employer, a DOD contractor, since June 1999. He has held a security clearance since approximately 2003. (Items 1, 2)

The SOR alleges that Applicant had six delinquent consumer debts totaling \$40,752 (SOR ¶¶ 1.a-1.h). Applicant listed his delinquent debts on his SCA, and he discussed them during his January 2021 background interview. A December 2020 credit bureau report lists all of the SOR debts, and a March 2022 credit bureau report lists SOR ¶¶ 1.a through 1.e. (Items 1, 2, 3, 4, 5)

Applicant's financial issues began in mid-2018, when he became financially overextended due to medical and private tutoring expenses for his child. After his father passed away in late 2018, he was despondent and did not handle his financial obligations. As of his SCA, he had not yet taken action to resolve his debts due to a lack of funds. He indicated during his background interview that he intended to resolve his delinquent debts; he cancelled his credit cards so that he would no longer incur credit card debt; and, he planned to cash out his 401(k) retirement account to pay his debts. In his Answer, he stated that he was "trying to find a remedy to remove these items from my record." He further stated, "Unfortunately I do not have a time table of when this will be completed, if at all." There is no record evidence of payment toward any debts. (Items 1, 2, 3)

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 ¶ 19(a), an “inability to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” relevant. 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 the circumstances. Applicant has not provided documentation of his efforts to resolve any of his delinquent debts. 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.

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.f:	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