



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



In the matter of:)
)
) ISCR Case No. 21-01416
)
Applicant for Security Clearance)

Appearances

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

12/05/2022

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 October 15, 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 October 16, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on July 18, 2022.

The hearing was originally scheduled for September 15, 2022, via video teleconference. However, as Applicant did not have access to a webcam, the hearing was continued until November 2, 2022. On November 2, 2022, the hearing was convened as rescheduled. I admitted Government Exhibits (GE) 1 through 9 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 16, 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 9, 2022.

Findings of Fact

Applicant is a 62-year-old employee of a government contractor for whom he has worked since August 2020. He has been steadily employed since 2006. He has a high school diploma and earned an associate's degree in 1982. He was married in 1983, but was legally separated from his spouse from about 2017 until his divorce was finalized in the middle of 2020. He has four grown children. (Tr. 19-21; GE 1, 2)

In the SOR, the Government alleged Applicant's six delinquent debts totaling approximately \$72,000. These delinquencies consisted of two home-improvement loans (SOR ¶¶ 1.a and 1.e), three credit cards (SOR ¶¶ 1.b, 1.c, and 1.d), and a local tax debt (SOR ¶ 1.f). Applicant admitted all of the SOR allegations with additional comment. His admissions are adopted as findings of fact. (Answer; GE 1-6, 9)

Applicant attributed his financial issues to his 2017 separation and resulting divorce in 2020. He claimed that when he separated from his ex-spouse, he was sending her money in order to pay for marital debts, including some of the SOR debts. He claimed that she was taking this money, but not using it to pay for the debts. He claimed that he was responsible for the SOR debts through the divorce. He did not provide documentary evidence of a separation agreement or a divorce decree to corroborate the assignment of marital debts. He earns about \$90,000 annually. He earns \$32 per hour, and \$48 per hour for overtime. He pays between \$1,000 and \$1,060 per month for his mortgage. He owns a working farm, but does not derive a regular income from it. He has about \$1,000 in his savings account. (Tr. 18, 22-23, 27, 30-31, 34-36, 40; Answer; GE 1, 2)

In about 2019, he paid between \$2,000 and \$2,500 in cash for a hay cutter. In about 2020, he paid about \$7,000 in cash for a hay baler. In April 2022, he bought a tractor. He paid \$1,000 in cash towards the tractor and makes monthly payments of \$550. The purchase price of the tractor was about \$38,000. (Tr. 37-39)

The \$46,920 home-improvement loan alleged in SOR ¶ 1.a has not been resolved. Applicant opened this account in February 2016 to purchase solar panels for the marital home. The last payment he made on this account was in about May 2018. He claimed that he was providing money to his ex-spouse to pay this debt but she was not paying it. He learned that the debt was not being paid in 2020. About six to eight months prior to the hearing, he contacted the creditor about making a payment arrangement, but he was unable to make one. (Tr. 21-25; Answer; GE 2, 4-6, 9)

The \$5,411 credit card alleged in SOR ¶ 1.b is being resolved. He became delinquent on this debt because he lost track of it, and he was not sure who would be responsible for it given his divorce. He claimed that he made a payment arrangement with the creditor after the SOR was issued and made payments of about \$56 per month that automatically came out of his bank account. As of the hearing date, he claimed the balance on this account was about \$4,600. The November 2021 credit report reflects a payment of \$57. (Tr. 25-26; Answer; GE 2, 4-6)

The \$3,187 credit card alleged in SOR ¶ 1.c has not been resolved. Applicant used this credit card to purchase airline tickets. He opened the account in 2017 and it was charged off in 2020. He claimed that he was providing money to his ex-spouse to pay this debt, but she was not paying it. He has not made any payment arrangements or payments on this debt after it became delinquent. (Tr. 26-28; Answer; GE 2, 5, 6, 9)

The \$2,273 credit card alleged in SOR ¶ 1.d is being resolved. Applicant used this credit card for every day expenses. He opened the account in 2002, and he last made a payment on it in 2019. He claimed that he was providing money to his ex-spouse to pay this debt but she was not paying it. He claimed that he made a payment arrangement with the creditor in 2020 after the creditor contacted him. He claimed he made payments of about \$56 per month since then, but he provided no documentation to corroborate these payments or the payment arrangement. (Tr. 28-29; Answer; GE 2, 4-6, 9)

The \$14,734 home improvement loan alleged in SOR ¶ 1.e has not been resolved. Applicant borrowed this money in 2016 to put a new roof on the marital residence. The last payment Applicant made on this account was in about February 2018. He claimed that he was providing money to his ex-spouse to pay this debt, but she was not paying it. He learned that the debt was not being paid in 2020. He has not made any payment arrangements or payments on this debt after it became delinquent. (Tr. 29-31; Answer; GE 2, 4)

The \$83 local tax debt alleged in SOR ¶ 1.f has been resolved. Applicant claimed that after the SOR was issued, he went to the tax office and paid this debt in person on an undisclosed date. He claimed he was not aware he owed this tax until the SOR was issued. (Tr. 31-32; GE 3)

In about 2018, Applicant's marital residence was foreclosed upon and sold at auction. Applicant claimed that he was providing funds for his ex-spouse to pay the mortgage on this home, but she was not doing so. He claimed that he found out about the delinquency when the account was about five months past due and that he tried to work with the creditor to avoid foreclosure, but was unable to do so. The sale of the marital residence satisfied the mortgage. (Tr. 23-24; GE 1, 2, 7)

The IRS entered a \$166,000 tax lien against Applicant in 2011 for failure to pay income taxes. In 2012, he resolved the tax issue and the aforementioned tax lien was released. Applicant claimed that he is current on all of his tax obligations. Any adverse information not alleged in the SOR, such as Applicant's foreclosure and his tax lien, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis. Applicant has not received any financial counseling and he does not follow a written budget. He acknowledged at the hearing that he tends to "fly by the seat of my pants" with respect to his budgeting. (Tr. 32-33; GE 8)

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.

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 significant amount of delinquent debt that has been unresolved for several 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 tax debt in SOR ¶ 1.f through payment when he realized he owed it. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

While Applicant has resolved the small tax debt in SOR ¶ 1.f through payment and is making minimal payments on two other debts, he has not provided sufficient evidence that the majority of his delinquencies are being resolved. His financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of a marital separation and divorce. 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 paid the small tax debt and has made monthly payments with respect to two of the other SOR debts, his monthly payments are minimal (\$56 or \$57). Given these minimal payments in relation to the total amount of his delinquent debt, he failed to show he is meaningfully addressing his delinquent debts. Importantly, despite having these unaddressed financial delinquencies, between 2019 and 2022, he spent about \$10,000 in cash and further indebted himself for farm equipment. AG ¶ 20(b) does not apply.

Applicant resolved a small tax debt and is making minimal monthly payments on two other debts. AG ¶ 20(d) is partly applicable, but Applicant has failed to show that he has a payment arrangement or is making payments on the vast majority of his overall delinquencies.

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

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.

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