



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



In the matter of:)	
)	
)	ISCR Case No. 21-02671
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

Statement of the Case

On December 28, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR, Government Exhibit (GE) 1) 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 elected in his March 1, 2022 response to the SOR (Answer, GE 1) to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on March 27, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 7, 2022. He did not respond to the Government's FORM. The case was assigned to me on July 25, 2022. The Government's documents identified as GE 1 through GE 5 in the FORM were admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 55 years old. He married in 1989, divorced and remarried in 2004, and divorced in 2017. He has two children, one adult and one minor; one of his children has special needs. He earned a bachelor's degree in 2011 and a project management certificate in 2019. He previously owned a home, from February 2005 to February 2017. (GE 1, 2, 4)

Applicant served honorably in the U.S. military from 1985 to 2012. He worked as a network engineer for a previous company for three years, from June 2015 to June 2018, when he was fired due to a disagreement with management. He was subsequently unemployed until November 2019. He then worked for another government agency from November 2019 to June 2020. As of his October 2020 security clearance application (SCA), he was a network engineer for his employer, a DOD contractor, since June 2020. He was granted a security clearance in 2005. (GE 1, 2, 4)

The SOR alleged that Applicant had four delinquent consumer debts, totaling \$31,804 (SOR ¶¶ 1.a - 1.d). In addition to his admissions in his Answer, Applicant disclosed and discussed his delinquent debts on his SCA, during his February 2021 background interview, and in his October 2021 response to interrogatories. A January 2021 credit bureau report lists all of the SOR debts, and a March 28, 2022 credit bureau report lists SOR ¶¶ 1.a, 1.b, and 1.d (GE 1 – 5)

Applicant attributed his delinquent debts to his second divorce and raising a child with special needs. In 2016, while separated from his second spouse and going through a divorce, he made minimal payments totaling \$1,200 monthly toward his debts. He became responsible for the debts incurred during his second marriage when his spouse did not honor their agreement to share in the responsibility for the joint debts incurred during their marriage. He was also ordered to pay alimony and child support. He was falling slowly behind on his debts.

Applicant sought help from a debt consolidation company, who informed him that it would represent him at a cost of \$400 monthly. The debt consolidation company sent letters to his creditors and requested that all correspondence related to his debts be directed to the company. He did not learn, until approximately one year later when he noticed his credit score dropping drastically, that his debts needed to be delinquent in order for the debt consolidation company to negotiate and settle his debts. He also learned at that point that the money he had paid to the debt consolidation company was held in an escrow account until the company reached a settlement with his creditors. The debt consolidation company settled only SOR ¶ 1.d. He terminated his contract with

the company in January 2018, and he began working to resolve his remaining debts. (GE 1 – 4)

Applicant stated in his SCA and response to interrogatories that he worked out payment plans with his creditors, but he did not provide documentation to corroborate his claim. He stated in his Answer that he contacted the credit bureaus and explained what happened when he worked with the debt consolidation company. He stated that the credit bureaus told him that “these accounts will be removed from [his] credit report in the very near future,” and stated that they were all accounts that were “very old” and from 2014. (GE 1 – 4)

SOR ¶ 1.a is for a \$11,182 charged-off personal loan. Applicant obtained this loan to pay his federal taxes for tax years 2015 and 2016. He acknowledged in his Answer that this debt was still reported on his credit report. (GE 1, 4)

SOR ¶ 1.b is for a \$10,919 charged-off personal loan. Applicant obtained this loan to purchase home goods and pay for living expenses after his divorce. He stated in his Answer that this debt was removed from his credit report. (GE 1, 4)

SOR ¶ 1.c is for a \$5,157 charged-off credit card. Applicant obtained this credit card for living expenses. He stated in his Answer that this debt was removed from his credit report. (GE 1, 4)

SOR ¶ 1.d is for a \$4,546 charged-off credit card. Applicant obtained this card for daily living expenses. As previously discussed, he stated that the debt consolidation company settled this debt. Documentation reflects that the creditor offered to settle this debt for \$4,000 in April 2017 if Applicant made payments according to a payment schedule from April 2017 to September 2018. He did not provide documentation to show that he abided by the creditor’s proposed payment schedule and settled this debt. He stated in his Answer that this debt was removed from his credit report. (GE 1, 3, 4)

Applicant described his financial status as “good” during his background interview. He indicated that he timely paid his bills, he was able to save money, and his finances were “back on track.” He stated in his Answer that he received \$3,311 monthly in military retirement pay and \$3,656 in military disability pay. He also stated that his current credit report reflects an exceptional payment history for his current debts. (GE 4)

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. AG ¶ 19(a), an “inability to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations” apply. Applicant has a history of not paying his debts.

I have considered all of the mitigating conditions under AG ¶ 20 and find 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), Applicant must provide evidence that he acted responsibly under his circumstances.

Although Applicant worked with a debt consolidation company from 2016 to 2018, he elected to terminate his contract and resolve his debts on his own. He did not provide any documentation of his efforts to resolve his outstanding debts, despite his financial capacity to do so. Rather, it appears he simply relied on his debts falling off his credit reports. There is no evidence that he has received financial counseling. I find that Applicant’s failure to address his delinquent debts continues 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.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge