



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



In the matter of:)	
)	
)	ISCR Case No. 20-03128
)	
Applicant for Security Clearance)	

Appearances

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

12/05/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns arising from his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 17, 2019. On January 25, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on November 17, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On June 1, 2022, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1-7. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on June 14, 2022, and he did not respond to the FORM. The case was assigned to me on July 21, 2022. Items 1 and 2 are the SOR and Applicant’s Answer, which are the pleadings in the case. Items 3-7 are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted SOR allegations ¶¶ 1.a-1.g, and denied allegations ¶¶ 1.h-1.j. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 41 years old. He earned a bachelor's degree in 2004. His last application for a security clearance was granted in 2009. He was married in 2003 and has four children, three of which are minors. He has worked for a federal contractor as an emergency services dispatcher since 2014. (Item 3)

Applicant did not include a narrative with his SOR answer, and he did not provide a response to the FORM. The only discussion of his debts in the record is in his 2019 background interview with a government investigator. He stated that his current financial situation could be better and that it was a work in progress. He asserted that he was willing and able to repay his debts. He reported that he followed a budget, but he had not had credit counseling. He claimed that he was making an effort to communicate with his creditors to resolve his financial delinquencies. (Item 7).

The SOR alleges ten delinquent debts totaling \$80,631. Seven of these debts are student loans totaling \$79,171. The status of the debts are as follows:

SOR ¶¶ 1.a-1.g are student loans in collection, totaling \$79,171. The October 2020 credit report shows that two loans originated in 2006, three in 2010, and two in 2012. The credit report also shows that these loans first became delinquent in 2104, and the date of last payment for these loans was in March 2020. In his 2019 SCA and background interview, he reported that his student loans were in default. He stated that they were delinquent because of unexpected medical expenses, but he did not provide any further information. He claimed that he previously arranged to rehabilitate the loans by making \$411 monthly payments. He claimed that he made nine payments, but failed to follow through to make the accounts current. In his interrogatory response, he provided a letter from December 2020 showing correspondence with a collection agency to rehabilitate his student loans. An unsigned agreement attached to the letter required that he make nine payments of \$882 to rehabilitate the loans. However, Applicant failed to provide any documentation showing that he ratified the agreement or made any payments to the collection agency. (Item 3, 4, 5, 7,)

SOR ¶ 1.h is a past-due auto loan for \$1,207. The credit report shows that Applicant opened this loan in 2012, and the date of last activity on the loan was in August 2019. Applicant stated that he fell behind on his loan payment for one month, and was unable to catch up. This debt is unresolved. (Item 5, 7)

SOR ¶ 1.i is a medical debt in collection for \$66. The credit report shows that the debt has been delinquent since 2019. Applicant denied this debt. In his background interview, he indicated that he was unaware of this debt, but would make every effort to

resolve it. He did not provide any documentation of his efforts to resolve this debt, and this debt remains unpaid. (Item 5, 7)

SOR ¶ 1.j is a 2018 judgment for \$187, which resulted from a fine for a traffic infraction in 2018. Applicant resolved this debt in November 2020. (Item 6)

Applicant did not provide any documentation concerning his current financial situation, such as his monthly income and expenses, and his assets. He provided no evidence that he has received credit counseling.

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.

The SOR allegations evidencing Applicant’s history of financial delinquencies are established by Applicant’s admissions, and the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

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.

Applicant paid SOR ¶ 1.j in November 2020. I find that allegation in Applicant's favor. AG ¶ 20(a) does not apply to the remaining SOR debts. Applicant failed to provide sufficient evidence showing that any of the remaining SOR debts are resolved, or that they became delinquent under circumstances that are unlikely to recur. In his background interview, Applicant attributed unexpected medical expenses as the reason for his delinquencies, however, he failed to provide any further information to assess that claim. He also failed to provide sufficient documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failure to pay his delinquent debt is recent, ongoing, and not isolated. His failure to meet his financial obligations continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) could potentially apply. In his background interview, Applicant claimed that the reason for his delinquencies were due to unexpected medical expenses. However, he failed to provide any further information to assess that claim, or evidence that shows that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply

AG ¶ 20(d) could potentially apply to his student loan debts. However, Applicant did not provide sufficient documentation of payment arrangements or of any payments made. AG ¶ 20(d) does not apply.

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 considered the potentially

disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's delinquent debts under Guideline F.

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.h:	Against Applicant
Subparagraph 1.j:	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.

Ross D. Hyams
Administrative Judge