



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



In the matter of:)
)
) ISCR Case No. 20-00282
)
Applicant for Security Clearance)

Appearances

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

12/13/2022

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On April 22, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) effective on June 8, 2017.

Applicant answered the SOR on April 29, 2020, and he requested a hearing. The processing of the case was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 12, 2022, and the hearing was convened as scheduled on August 17, 2022. The Government offered exhibits (GE) 1-9, which were admitted into evidence without objection. The

Government's exhibit list was identified as HE I and its disclosure letter to Applicant was marked as HE II. Applicant testified but did not offer any documents into evidence. The record remained open until August 31, 2022, to allow Applicant to submit documentary evidence. He failed to submit any evidence. DOHA received the hearing transcript (Tr.) on August 25, 2022.

Findings of Fact

In his SOR answer, Applicant admitted all the allegations, with some explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 39-year-old employee of a defense contractor. He began working at his present job in 2017. He is an aircraft maintainer. He has served in the U.S. Air Force and the Air Force Reserve for approximately 20 years, including three deployments, one to Afghanistan. He is retirement eligible this year from the Air Force Reserve. He holds an associate's degree. He was married from 2005 to 2014. He has two minor children from this marriage for whom he pays child support. He married for the second time in 2016 to his current wife from whom he is now estranged. She lives in a different state. He has one child from this marriage and there are also two stepchildren. He provides financial support for his estranged wife and all three children. (Tr. 6, 20-21, 26-28; GE 1)

The SOR alleged 18 delinquent accounts (automobile repossessions, payday loans, and consumer debts) totaling approximately \$66,212. The debts are established by credit reports from January 2018, September 2019, January 2021, and August 2022; Appellant's SOR admissions; and his hearing testimony. The debts listed in SOR ¶ 1.g is the same debt listed in SOR ¶ 1.m. I find for Applicant on the debt listed in SOR ¶ 1.m. (SOR ¶¶ 1.a – 1.r). (Tr. 21; GE 5-9; SOR answer)

Applicant admitted all the SOR debts during his testimony. He also admitted that he has had financial problems for about 15 years, going back to 2007. He described himself as "financially illiterate" in his younger years. He claimed that he made efforts in the past to contact his creditors to work out payment arrangements. He did not document any finalized payment plans with any of the SOR creditors. He admitted that he has not made any payments toward any of the SOR debts. He believed that once the debts went into collection status there was nothing he could do to address them. He also claimed that he disputed some debts (SOR ¶¶ 1.g, 1.p-1.r), but the debts were confirmed by the credit bureaus. All the SOR debts remain unresolved (Tr. 21-22, 28-29, 62, 64; GE 4-9)

Applicant's gross monthly income is approximately \$12,000. He pays his estranged wife approximately \$2,000-\$3,000 monthly for her living expenses. She also has access to their (his) bank account. He pays approximately \$1,000 monthly in child support for his two children from his first marriage. He stated that he is trying to buy a home and is working with a credit counselor in an effort to get him qualified to make a home purchase. He claimed he uses a monthly budget. He was given the opportunity to

provide documentary evidence of his credit counseling, his budget, and anything else about his current financial picture after the hearing, but he failed to produce anything. (Tr. 23-24, 28, 62-65, 67)

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 national security eligibility 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 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 for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated numerous delinquent debts, which remain unpaid or unresolved. I find both of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Applicant's debts are recent and he admitted that he has not paid or resolved them. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

While providing financial support for two households and paying child support from an earlier marriage are conditions beyond his control, he has not acted responsibly by doing nothing to resolve his debts, except apparently contacting some creditors about possible payment arrangements with no meaningful success. AG ¶ 20(b) is partially applicable.

Aside from his contact with a credit counselor to help him qualify for a home purchase, Applicant did not present evidence of financial counseling. He failed to establish good-faith efforts to resolve his debts. Given the unpaid status of his debts, Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply, except as to SOR ¶ 1.m. Although he took responsibility for all the debts, during his testimony he referenced some disputes he made toward certain debts. However, he failed to provide documentation supporting any of those disputes. AG ¶ 20(e) 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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military (including his three deployments) and federal contractor service, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of financial responsibility, which causes me to question his ability to resolve his debts.

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 Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

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.l, 1.n-1.r:	Against Applicant
Subparagraph: 1.m:	For 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.

Robert E. Coacher
Administrative Judge