



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



In the matter of:)
)
) ISCR Case No. 20-03755
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2022

Decision

HYAMS, Ross D., Administrative Judge:

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

Statement of the Case

Applicant last submitted a security clearance application (SCA) on November 16, 2017. On February 4, 2022, 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 March 8, 2022, 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 April 12, 2022, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1-8. 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 April 19, 2022. A response was due on May 19, 2022, but none was received. The case was assigned to me on, July 21, 2022. Items 1-3 are the SOR and Applicant’s Answer, which are the pleadings in the case. Items 4-8 are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations (§§ 1.a-1.g). 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 45 years old. His last application for a security clearance was granted in 2020. He was married in 1998 and has two children. One of his children is an adult, and the other a minor. He served on active duty in the Army from 1997-2019. (Item 4)

Applicant told a government investigator during his September 2018 background interview that he wanted to have his finances in order prior to retiring from the military in July 2019. He stated in his March 2022 SOR answer that he was not going to make excuses for his past financial decisions, and that he has tried to get back on his feet for the last two years after exiting the military. He stated that he is embarrassed by his past poor financial decisions, and that he is finally in a position to repair his wrongs. (Item 5)

Applicant reported that his mother had cancer from about 2016-2019, and that he and his siblings had been providing her with some financial assistance. He reported that this impacted his ability to repay debt during this time period. He did not state how often or how much financial assistance he was contributing to her. (Item 4, 5)

The SOR alleges five charged-off debts totaling \$55,365, and two debts in collection, totaling \$4,248. The status of the debts follows:

SOR § 1.a is an auto loan that was charged off in 2017 for \$26,737. In his 2018 background interview, Applicant stated that he fell behind on this debt because money became tight, then his mother had cancer. She needed financial assistance, and he wanted to help her out. In his answer, he stated he had monthly auto-pay on this account until November 2016. He reported that he fell two months behind and he could not catch-up with the required payments. The debt is unresolved. (Item 5, 6, 7, 8)

SOR § 1.b is a motorcycle loan that was charged off in 2017 for \$14,144. In his 2018 background interview, Applicant stated that he fell behind on this debt because money became tight, then his mother had cancer, needed financial assistance, and he wanted to help her out. In his answer, he stated that he fell behind on his payments, and could not catch up. He voluntarily surrendered the motorcycle in 2019. He claims that in 2021, he tried to set up a payment plan to repay this debt, but he did not earn enough to be able to afford it. The debt is unresolved. (Item 5, 6, 7, 8)

SOR § 1.c is a personal loan that was charged off for \$9,564. In his answer, Applicant stated that because of his "poorly planned exit from the military," he was not able to make monthly payments, and fell behind. The debt is unresolved. (Item 7)

SOR § 1.d is an auto loan that was charged off in 2015 for \$4,460. In his answer, Applicant stated that in 2016, this vehicle was totaled in an accident. His insurance

company did not cover the full amount of the loss, and this debt is the remainder. The debt is unresolved. (Item 7, 8)

SOR ¶ 1.e is a debt to a cellular phone service provider that was placed for collection in the amount of \$2,752. The debt is unresolved. (Item 7)

SOR ¶ 1.f is a debt to a cellular phone service provider that was placed for collection in the amount of \$1,496. In his 2018 background interview, Applicant stated that he tried to turn off his cellular phone service before deploying overseas in 2014. He claimed that he was told that he could, but when returned home, he was told that he owed them \$1100. He claimed that he paid \$400 at the time, but provided no documentation to corroborate his claim. The debt is unresolved. (Item 5, 6, 7, 8)

SOR ¶ 1.g is a credit card that that was charged off for \$460. In his answer, Applicant stated that he made arrangements to resolve this debt by March 30, 2022. However, he did not provide any documentation of either the payment arrangements with the creditor or any payments made. (Item 6, 7)

Applicant did not provide any documentation showing that any of his debts have been or are being paid, or otherwise resolved. He also submitted no documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. 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;

(c) 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;

(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.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient evidence showing that any of alleged debts are resolved, or that any became delinquent under such circumstances that are unlikely to recur. He failed to provide sufficient documentation of his current financial situation or evidence which might establish his ability to address his debts responsibly. His failure to pay his charged-off and delinquent debt is recent, ongoing, and not isolated. This failure to meet his financial obligations continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant provided some financial assistance to his mother when she had cancer between about 2016-2019. However, some of the alleged debt became delinquent prior to her illness. He also did not resolve these debts after the financial assistance ended. Applicant did not provide sufficient evidence showing that his debts occurred largely due to circumstances beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

AG ¶ 20(d) could potentially apply to ¶ 1.g. However, since Applicant did not provide any documentation of either the payment arrangements with the creditor, or any payments made, AG ¶ 20(d) does not apply.

AG ¶ 20(e) could potentially apply to ¶ 1.f. However, since Applicant did not provide any documentation showing that he disputed this debt with the creditor, 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 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 considered Applicant's military service. 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 charged-off and 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.g:	Against 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