



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



In the matter of:)
)
) ISCR Case No. 22-00237
)
Applicant for Security Clearance)

Appearances

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

12/06/2022

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) in August 2021. (Item 2) On March 10, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. (Item 1) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 1) Department Counsel submitted the Government’s written file of relevant material (FORM), dated May 3, 2022, including items

1 through 6. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant acknowledged receipt of the FORM on May 10, 2022, but submitted no response. There were no objections by Applicant, and Items 1 through 6 are admitted into evidence. The case was assigned to me on August 4, 2022.

Findings of Fact

Applicant is 51 years old. He earned a General Education Diploma in 1989. He is not married, but cohabitated with the same partner from 1994 until at least 2021. He has two children (ages 18 and 27). He has been employed as a maintenance worker since July 2021, and has held various positions including laborer and truck driver. He was unemployed for approximately three months in 2017. (Items 1, 2)

The SOR alleges eight delinquent debts, totaling approximately \$22,318. Applicant admitted the allegations in SOR ¶¶ 1.a through 1.f, and 1.h with explanations. He denied the allegation in SOR ¶ 1.g, claiming that he had resolved that debt. (Item 1)

The evidence concerning debts alleged in the SOR is summarized below.

SOR ¶ 1.a: credit account charged off for \$9,278. Applicant admitted the allegation. He reported opening the account in November 2019 to finance a \$7,200 motorcycle/gear purchase. He voluntarily surrendered the motorcycle in March 2021, and understood he was responsible for any deficiency balance following sale of the motorcycle at auction. He also reported that there had been no communications from the creditor since he returned the motorcycle and that there had been no settlement negotiations. The September 2021 credit report reflects the account as charged off with a \$9,278 balance. The May 2022 credit report reflects the debt as charged off with a \$9,278 balance and \$7,650 past due. This debt is not resolved. (Item 1, Item 3 at 7-8, Item 4 at 2, Item 5 at 3)

SOR ¶ 1.b: credit card account charged off for \$4,634. Applicant admitted the allegation. He reported the account became delinquent in early 2019 and did not recall other account details. September 2021 and May 2022 credit reports reflect the account as charged off with a \$4,634 balance. In October 2019, a \$4,634 "Civil Judgment" was entered against Applicant. This debt is not resolved. (Item 1, Item 3 at 4, 5, 7, Item 4 at 3, Item 5 at 5; Item 6 at 2)

SOR ¶1.c: credit card account charged off for \$3,075. Applicant admitted the allegation. He reported the account became delinquent in approximately April 2017, and that there had been no settlement negotiations. The September 2021 and May 2022 credit reports reflect the account as charged off with a \$3,075 balance. This debt is not resolved. (Item 1, Item 3 at 4, 7, Item 4 at 3, Item 5 at 5)

SOR ¶1.d: credit card account charged off for \$2,212. Applicant admitted the allegation. In September 2021, he reported the account delinquent in early 2019, that he

entered a payment plan in March 2021, and had made the agreed upon (\$24) monthly payments since. The September 2021 credit report reflects the account as charged off with a \$2,212 balance. The May 2022 credit report reflects the account as charged off with a \$1,953 balance. This debt is being resolved. (Item 1, Item 3 at 5, 7, Item 4 at 3, Item 5 at 4)

SOR ¶1.e: collection account for \$1,362. Applicant admitted the allegation, but provided no additional details. The September 2021 credit report reflects the account as placed for collection with a \$1,362 balance. The May 2022 credit report does not reflect the account. This debt is not resolved. (Item 1, Item 3 at 7, Item 4 at 4)

SOR ¶1.f: collection account for \$663. Applicant admitted the allegation and reported the debt is for a retail credit account, but could provide no further details. The September 2021 and May 2022 credit reports reflect the account as placed for collection with a balance of \$663. This debt is not resolved. (Item 1, Item 3 at 7, Item 4 at 4, Item 5 at 4)

SOR ¶1.g: collection account for \$636. Applicant denied the allegation and claimed that he had paid this account. He submitted evidence that the account payoff amount was \$636.78 until March 15, 2022, but did not submit evidence that he had paid or otherwise resolved the debt. He told the background investigator that he believed this was a high interest rate credit card account, and that he had decided not to pay the exorbitant late fees assessed after he missed a payment. He has not engaged in settlement negotiations. The September 2021 and May 2022 credit reports reflect the account as placed for collection with a \$636 balance, and that the consumer disputes the account information. In May 2021, a "Small Claims Judgment" was entered against Applicant for \$636, and listed the same creditor as alleged in the SOR. This debt is not resolved. (Item 1 at 4-5, Item 3 at 6-7, Item 4 at 4, Item 5 at 6; Item 6 at 1)

SOR ¶1.h: collection account for \$458. Applicant admitted the allegation, could not recall the account details, and has not engaged in settlement negotiations. September 2021 and May 2022 credit reports reflect the account as placed for collection with a \$458 balance. This debt is not resolved. (Item 1, Item 3 at 7, Item 4 at 4, Item 5 at 5)

In a September 2021 background interview, Applicant attributed his financial issues to unemployment, underemployment, being the sole wage earner in his home, family expenses, and a truck payment that he could not afford. He explained that he purchased a truck in July 2017 for \$27,000 and made required loan payments until early 2019. When he voluntarily returned the truck to the dealer the outstanding loan balance exceeded the vehicle's value by \$5,000, and he depleted his savings by paying the deficiency balance and purchasing another vehicle. He said that his fiancé was disabled, unable to work and received approximately \$600 monthly compensation for her disability. (Item 3 at 4-8)

Applicant reported retaining a law firm in 2019 to assist in consolidating credit card debt, making three of the required \$350 monthly payments, and then terminating those

payments because he could not afford them. He stated his intent to file for bankruptcy after saving enough to pay the required costs. He said that he was timely paying his current debts, and indicated his willingness to pay delinquent debts, but said that he could not afford to do so. Applicant's recent credit records reflect no accounts in collection or charged off, except those alleged in the SOR. (Item 3 at 4-8, Item 4, Item 5)

In response to the SOR, Applicant stated that he had been solely responsible for supporting his family of four over the past 28 years, that his long-term relationship with his cohabitant had recently ended, and that he had sold his house. He noted his intent to apply proceeds from the sale of his home to his debts and provided documentary evidence of a pending sale, but provided no documentary evidence the sale occurred. He wrote that he was working on contacting his creditors and resolving his debts, communicating with lawyers in an effort to resolve his debts, and hoped to declare bankruptcy soon. He stated that his employer recently increased his pay in recognition of his hard work and loyalty, and provided documentary evidence of his excellent job performance. He said that he would never jeopardize his family or job because of financial difficulties. (Item 1 at 3-11)

Policies

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of the national security.” 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

The security concern relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant’s admissions and the evidence in the FORM establish a history of financial problems dating back to at least 2017. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 provides conditions that could mitigate security concerns. Five potentially apply in this case:

(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.

AG ¶ 20(a) is not established. While the evidence reflects that Applicant is resolving one of the debts alleged in the SOR, seven debts alleged in the SOR, totaling approximately \$20,106, remain unresolved. His financial issues are ongoing, and based upon the record evidence I cannot conclude them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's periods of underemployment, unemployment, and his cohabitant's inability to obtain gainful unemployment because of a disability were largely beyond his control. However, he did not provide sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) is not fully established. Applicant reported working with a law firm in 2017 in an effort to consolidate delinquent debts, but failed to provide sufficient evidence that he received financial counseling and that the debts alleged at SOR ¶¶ 1.a through 1.c and 1.e through 1.h are being resolved or that his finances are otherwise under control.

AG ¶ 20(d) is not fully established. Applicant reported and the record evidence supports a conclusion that he entered into and is adhering to a good-faith effort to repay the debt alleged in SOR ¶ 1.d. However, he provided insufficient evidence to support a conclusion that he has initiated or is adhering to a good-faith effort to repay the creditors, or otherwise resolve the debts alleged in SOR ¶¶ 1.a through 1.c and 1.e through 1.h. SOR ¶ 1.d is concluded for Applicant.

AG ¶ 20(e) is not established. Although there is some evidence Applicant disputed debts alleged in the SOR, he has provided insufficient evidence to establish a reasonable basis to dispute the legitimacy of any debt, or to substantiate the basis of any dispute, or of actions taken to resolve any issue.

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. I have incorporated my comments under Guideline F in my whole-person analysis. I considered Applicant's age, education and employment history; that his financial problems were caused, in part, by circumstances beyond his control, and that he has acted responsibly regarding one of his delinquent accounts.

However, he has not established a "meaningful track record of debt reduction." See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). The adjudicative guidelines do not require that an applicant make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He need only establish a plan to resolve financial problems and take significant actions to implement the plan. Applicant has good intentions, but his good intentions have not yet evolved into a reasonable and credible plan that includes the debts alleged at SOR ¶¶ 1.a through 1.c and 1.e through 1.h.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant

Conclusion

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

Eric C. Price
Administrative Judge