



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



In the matter of:)
)
) ISCR Case No. 21-01244
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2023

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 August 6, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted 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 on June 8, 2017.

On August 6, 2021 (this date may be incorrect, but that is what the record reflects), Applicant answered the SOR, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 15, 2022, and the hearing was convened as scheduled on September 19, 2022,

using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list was marked as Hearing Exhibit (HE) I. Applicant testified, but he did not offer any exhibits at the hearing. The record remained open after the hearing and Applicant timely submitted Applicant Exhibits (AE) A-E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 29, 2022.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations. 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 45-year-old employee of a federal contractor performing the duties of a supply technician. He began working at his present job in December 2019. He previously worked for a federal contractor from 2009 until October 2017 when he was laid off. He was unemployed for five to six weeks when he took a position with a substantial pay cut. At the time of his lay off, he was earning approximately \$65,000 yearly. When he was hired after the layoff, he earned approximately \$30,000 annually. He is a high school graduate. He is married and has two adult children, one of whom still resides with him and his wife. Applicant financially supports this child along with three grandchildren, ages three, one, and an infant. (Tr. 6, 18-19, 21-23; GE 1)

The SOR alleged 15 delinquent accounts (credit cards, consumer debt, a time-share debt, and medical debts) totaling approximately \$52,752. (SOR ¶¶ 1.a – 1.o) The debts are established by credit reports from October 2020, April 2021, and September 2022; Applicant's personal subject interview (PSI) with an investigator in January 2021; and his SOR admissions. (GE 2-5; Answer to SOR)

Applicant's financial difficulties began after he was laid off in 2017. Then he was underemployed after his five-to-six-week layoff from 2017 until he was hired by his current employer in 2019. He started at the salary of \$63,000 in 2019. He also has been supporting his daughter and her three children. He has not received any financial counseling, but he developed his own plan to deal with his delinquent debts. That plan is for him to save enough money to pay one debt at a time and then move to the next debt. Using this plan, he has paid four debts (one was a non-SOR debt) and has an established payment plan for a fifth debt. His wife works and makes approximately \$100,000 per year, but they keep their finances separate and he admitted that most of the SOR debt is his alone. The exception is the time-share debt (SOR ¶ 1.n), which is a joint debt with his wife. (Tr. 18-19, 23-24, 29-30, 32, 38, 42-43; GE 4)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$14,768. This is a consumer debt. The debt became delinquent in July 2020. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2, 3, 5; Answer to SOR)

SOR ¶ 1.b-\$2,666. This is a consumer debt. The debt became delinquent in November 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2, 3, 5; Answer to SOR)

SOR ¶ 1.c-\$2,046. This is a consumer debt. The debt became delinquent in November 2018. Applicant admitted this debt and documented setting up a payment plan. Under the plan, he pays \$100 monthly directly from his bank account. He has made seven payments so far, the first one was in March 2022 and the last one was in September 2022. This debt is being resolved. (GE 2, 3, 5; Answer to SOR; AE B)

SOR ¶ 1.d-\$1,935. This is a consumer debt. The debt became delinquent in May 2019. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2, 3, 5; Answer to SOR)

SOR ¶ 1.e-\$1,376. This is a consumer debt. The debt became delinquent in November 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2, 3, 5; Answer to SOR)

SOR ¶ 1.f-\$1,251. Applicant admitted this consumer debt. He documented settling this debt in October 2021. This debt is resolved. (AE D)

SOR ¶ 1.g-\$683. This is a consumer debt. The debt became delinquent in December 2019. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2, 3, 5; Answer to SOR)

SOR ¶ 1.h-\$662. This is a consumer debt. The debt became delinquent in December 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2, 3, 5; Answer to SOR)

SOR ¶¶ 1.i-\$211; 1.j-\$164; 1.k-\$14; 1.l-\$10. Applicant admitted these medical debts. He claims that he paid these debts directly to the medical providers when he was notified of them. Applicant failed to provide documentation of any payments. These debts are unresolved. (Tr. 43; GE 2, 5; SOR answer)

SOR ¶ 1.m-\$300. Applicant admitted this consumer debt. He documented settling this debt in April 2022. This debt is resolved. (AE E)

SOR ¶ 1.n-\$25,747. Applicant admitted this time-share debt. He stated that he and his wife became disgruntled with the time-share company because promises it made were not kept. His wife decided they would stop making payments. The account became delinquent in January 2017. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (Tr. 38-39; GE 3; SOR answer)

SOR ¶ 1.o-\$919. Applicant admitted this consumer debt. He documented settling this debt in March 2021. This debt is resolved. (AE C)

Applicant also resolved a non-SOR credit-card debt and documented its payment. It was resolved in March 2020. (AE A)

Two of the above resolved delinquent debts were paid after the issuance of the SOR in August 2021. Applicant testified that his current net annual income is approximately \$54,000 and that his wife's current gross income is approximately \$100,000 annually. They own a home and have never been late on their mortgage payments. He claimed that he typically has approximately \$300 left over at the end of the month after paying all his bills. He has approximately \$15,000 in a retirement account. He uses a spreadsheet as a monthly budgetary tool. (Tr. 23-24, 26-27, 44, 53; AE D, E)

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 has a history of financial difficulties dating back to 2017. Additionally, he incurred 15 delinquent debts totaling, approximately \$52,000. Eleven of the debts remain unpaid. Applicant’s admissions and credit reports establish the debts. I find both 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent because they are ongoing. Although he paid three of the debts and is making payments on a fourth debt, he failed to address the remaining debts, which comprise the majority of the overall debt amount. Additionally, two of the debts were not paid until after the issuance of Applicant's SOR in April 2021. AG ¶ 20(a) is not applicable.

Applicant presented evidence that the debts were affected by circumstances beyond his control, namely, his unemployment and underemployment, and the need to provide financial support to his daughter and his three grandchildren. However, he did not act responsibly concerning the debts when he failed to resolve them in a timely fashion. AG ¶ 20(b), therefore, has some application, but does not fully apply.

Applicant presented no evidence of financial counseling. His track record to date does not support a good financial picture. Based upon his past history, there is no reason to believe that he will right his financial ship in the future. While he did resolve several debts, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.c, 1.f, 1.m, and 1.o.

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 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 contractor service, his unemployment, his underemployment, and the financial support he provides to his daughter and grandchildren. However, I also considered that he has not adequately addressed his delinquent debt. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude 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.b, 1.d-1.e, 1.g-1.l, 1.n:	Against Applicant
Subparagraphs: 1.c, 1.f, 1.m, 1.o:	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