



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



In the matter of:)
)
) ISCR Case No. 21-01792
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On September 29, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on February 5, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2022.

The hearing was convened as scheduled on January 12, 2023. I admitted Government Exhibits (GE) 1 through 6 in evidence without objection. Applicant testified, but did not offer any documents as evidence at the hearing. I received a transcript (Tr.) of the hearing on January 20, 2023.

Findings of Fact

Applicant is a 42-year-old employee of a government contractor. With the exception of a three-week furlough in 2013, he has worked continuously for this contractor or a predecessor thereof since 2006. He earned a high school diploma in 1998. He has never been married, but has resided with a cohabitant since 2010. He is financially responsible for seven minor children; three of whom are his biological children, one of whom is his cohabitant's child from a prior relationship, and three of whom are his cohabitant's niece and nephews. He has held a security clearance since 2007, and has never received a warning for a security clearance violation. (Tr. 23, 28-32, 35-38; GE 1, 6)

In the SOR, the Government alleged Applicant's 15 delinquent debts totaling approximately \$56,000 (SOR ¶¶ 1.a through 1.o). These delinquencies consisted of insurance accounts, vehicle loans, utility accounts, and personal loans, among others. Applicant admitted all of the SOR allegations with additional comment, with the exception of SOR ¶¶ 1.c, 1.h, and 1.n, which he denied with additional comment. He neither admitted nor denied the allegation in SOR ¶ 1.n, so I have treated his lack of response as a denial. His admissions are adopted as findings of fact and are corroborated by the Government's 2022, 2021, and 2018 credit reports. (SOR; Answer; GE 2-6)

The 2022 and 2021 credit reports listed the debt in SOR ¶ 1.g as paid prior to the issuance of the SOR. This account is resolved in favor of Applicant. (Answer, GE 2, 3, 6)

Applicant denied the debt alleged in SOR ¶ 1.c because he thought his insurance should cover it. He claimed that he contacted the creditor of the debt in 2017 to file an insurance claim that he thought would satisfy it. He claimed that the creditor told him he did not have the necessary insurance, so he stopped trying to address this debt. He provided no documentation corroborating these efforts, or corroborating that insurance should have satisfied the debt. The debt is listed as delinquent in the 2022 and 2021 credit reports. (Tr. 54-56; Answer; GE 2, 3)

Applicant claimed that the debts listed in SOR ¶¶ 1.f and 1.h are duplicate accounts because he only had one account with this creditor. He also claimed that he believed that he paid the account in SOR ¶ f. He provided no documentary evidence to corroborate these claims. Instead, the 2018 credit report listed two delinquent accounts with different account numbers, different balances, and different dates on which the accounts were opened. The debts are listed as delinquent on the 2018 credit report with a last action date of 2014 and 2013, respectively. Both accounts were placed for collection more than six years ago, so it is possible that they aged off subsequent credit reports. Based upon the foregoing, I conclude that Applicant had two separate delinquent accounts with this creditor and they are unresolved. (Answer; GE 4-6)

The delinquent personal loan alleged in SOR ¶ 1.n is listed in the 2018 credit report as having been placed for collection. It has a last activity date of May 2013. As

the account was placed for collection more than six years ago, it is possible that it aged off subsequent credit reports. Applicant did not provide documentary evidence to support the account is resolved. (Answer; GE 4-6)

Applicant claimed that he would resolve his SOR debts by filing a petition in Chapter 7 bankruptcy. He has yet to file, but he claimed the he has retained a bankruptcy attorney, filled out the necessary paperwork and paid the fees to do so. He claimed that he would have approximately \$40,000 discharged through his bankruptcy when the process is completed. He is waiting to file bankruptcy to avoid having it on his credit report while trying to locate a new residence. He also said, without providing a specified reason, that he has been waiting until his security-clearance adjudication is completed to file bankruptcy. He acknowledged that he decided to file bankruptcy in January 2022, because he realized his security clearance was in jeopardy because of his delinquent debts. He took the credit counseling class that is a prerequisite for filing a bankruptcy petition. (Tr. 51-53, 57-58); Answer; GE 6)

Applicant claimed that he contacted the creditor of the debts listed in SOR ¶¶ 1.a and 1.o in 2014 or 2015 to make payment arrangements, but he could not reach an agreement because the creditor wanted him to pay more money than he could afford. These debts are unresolved. (Tr. 54-56)

Applicant made no other efforts to contact the creditors or dispute any of the remaining SOR debts. With the exception of SOR ¶ 1.g, he made no payments on the SOR debts after they became delinquent. Other than SOR ¶ 1.g, the SOR debts are established and unresolved. (Answer, Tr. 54-56; GE 2-6)

Applicant attributed his financial issues to several causes. He had a three-week furlough in 2013, when he earned no income. He claimed that not only did this furlough have a cascading effect that detracted from his ability to pay his debts, it directly led to his having to move in with his father and to falling behind on the debt listed in SOR ¶ 1.d. His cohabitant, who contributes to the household finances, has not earned as much money as he has and, at times, has been unemployed. His cohabitant's 63-year-old mother resides with them while only providing money for the water and gas bill. He has had to take out short-term payday loans in order to meet his monthly expenses, and then was unable to pay some of these payday loans pursuant to their terms. He financially supports seven children. He also acknowledged that he has mishandled his money and was negligent in thinking that delinquent debts would just "go away" after seven years. (Tr. 32-35, 38-40, 54-55, 58; Answer; GE 6)

Applicant's cohabitant earns about \$1,100 per month in take home pay. Applicant's take home pay is about \$3,400 per month. He pays \$2,250 per month in rent and \$500 per month in utilities. In July 2021, he put \$1,500 down on the purchase of a used 2012 vehicle for \$32,000. He pays \$583 per month on it. He claimed that he tries to save about \$100 to \$150 per month; however, he acknowledged that he has no money in his savings account. He also acknowledged that most, if not all of his income, is accounted for by his expenses. Applicant lived with his father from 2013 until August

2022, when he moved into his current residence. His father passed away in August 2021. He does not expect to receive any inheritance from his father's estate. (Tr. 40-50)

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 debt alleged in SOR ¶ 1.g was paid prior to the issuance of the SOR. I find in Applicant’s favor with respect to that allegation. Otherwise, Applicant had 14 delinquent debts totaling about \$56,000 that have been delinquent for years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;

(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 financial delinquencies are ongoing and therefore recent. The evidence does not show that the debts are resolved or are under control. I cannot find they are unlikely to recur. He has not established a track record of financial responsibility. If he does file bankruptcy, his debts are eventually discharged, and he stays current on his debts afterwards, he may be able to meet this mitigating condition. However, he currently fails to meet that standard. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of a furlough, his cohabitant's unemployment and underemployment, and his willingness to financially support members of his cohabitant's family. These conditions were beyond his control. However, his financial issues also arose because of his negligence and mishandling money. These conditions were within his control. To the extent conditions were beyond his control, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these debts. While he claimed that he would file Chapter 7 bankruptcy to resolve these debts, he has yet to do so after almost a year. Moreover, while filing Chapter 7 bankruptcy is a legally permissible manner with which to address one's debt, it is of limited value in terms of mitigation. Given these considerations, he has failed to show that he acted responsibly under the circumstances and AG ¶ 20(b) does not apply.

Applicant has taken the mandatory financial counseling course that is a prerequisite for filing bankruptcy. However, as I indicated in my analysis of AG ¶ 20(a), because his delinquencies are ongoing, there is no clear indication that the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant has not made payments on the vast majority of his debts. While he plans to file Chapter 7 bankruptcy as a means to resolve his debts, he has yet to do so. Moreover, as he decided to resolve his debts through bankruptcy after realizing that his clearance was in jeopardy, he failed to show that he made a good-faith resolution of his debts. AG ¶ 20(d) does not apply.

Applicant disputed owing the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.h. He claimed that he does not owe the debt in SOR ¶ 1.c because insurance should have covered it. However, he provided no documentary evidence to corroborate this insurance coverage. He also did not provide documentary corroboration that he disputed the debt with the creditor or credit reporting agencies. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016).

Applicant disputed owing the debts in SOR ¶¶ 1.f and 1.h because he thought he only had one account with this creditor, and he claimed that he paid that account. Given the information in the 2018 credit report, he has two separate accounts with this creditor. He provided no documentary evidence to corroborate that he paid either of these accounts. He provided no evidence that he contacted the creditor or the credit reporting agencies to dispute either account. As the bases of his disputes with SOR ¶¶ 1.c, 1.f, and 1.h are not reasonable or are not substantiated by documented proof, AG ¶ 20(e) does not apply.

None of the mitigating factors are applicable. Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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 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. I conclude Applicant did not mitigate 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.o	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.

Benjamin R. Dorsey
Administrative Judge