



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



In the matter of:)
)
) ISCR Case No. 21-02731
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M, Folks, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has entered his debts into a debt relief program but provided insufficient details and documentation about how he is resolving his debts through that program or whether his efforts are reasonable. He did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2020. On February 11, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The Department of Defense (DOD) issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 16, 2022, and elected a decision by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On August 22, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. DOHA mailed the FORM to Applicant on September 12, 2022, and he received it on September 19, 2022. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. He submitted a narrative statement (FORM Response) and one additional document (Applicant's Exhibit (AE)) A, received at DOHA on October 17, 2022. Neither Applicant nor Department Counsel noted any objections to admission of any proffered exhibits.

The case was assigned to me on December 2, 2022. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Government Items 3 through 7 and AE A are admitted into evidence without objection.

Findings of Fact

In his response to the SOR, Applicant admitted all of the debts alleged in the SOR (¶¶ 1.a through 1.g), noting that all but one of his debts were in a debt relief program. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 35 years old. His first marriage, from 2015 to 2018, ended in divorce. He remarried in 2019. He did not disclose any children on his SCA. After earning his high school diploma in 2006, Applicant served briefly in the Air Force in 2007, before being medically discharged. Since then, he has been employed in the defense industry, with a clearance. He worked for a large defense contractor from 2014 to 2020, and has worked for a different employer and clearance sponsor since March 2020. (Items 3, 4)

When Applicant submitted his most recent SCA, in January 2020, he disclosed a delinquent auto debt, noting that it was attributable to his divorce. He later discussed his financial issues in a background interview. (Items 3, 4)

The SOR details seven delinquent debts, totaling about \$37,000. They are established by Applicant's admissions, and by the credit reports in the record, from February 2020, October 2021, and January 2022. (Items 5, 6, 7)

Applicant states that SOR ¶ 1.g (\$248), a debt placed for collection by a power company, has been paid. This is supported by Government's Item 5, which shows a zero balance. This account is resolved.

The remaining accounts, however, are not resolved. SOR ¶¶ 1.a (\$11,124), 1.c (\$6,650), and 1.f (\$7,402) are debts that have been charged off by a credit union. SOR ¶ 1.b (\$7,332) is a debt that has been charged off by a bank. SOR ¶ 1.d (\$2,825) is a debt that has been charged off by a bank. SOR ¶ 1.e (\$2,178) is a debt that has been placed

for collection by a phone company. Applicant stated in his SOR Response and in his FORM Response that he has entered these accounts into a debt relief service.

Applicant documents that as of February 2022, he was in good standing with the debt resolution company. (AE A) However, with his October 2022 FORM Response, he provided no documentation of any payments, or any details about any arrangements or agreements to pay his debts, either through the debt relief company, or to the individual creditors.

Applicant notes not only his February 2018 divorce but also a car accident around that time that “totaled” his vehicle (resulting in one of the debts to the credit union in the SOR). He notes that no new debts have been added to his credit since the 2020 credit report. He notes that his debts are not resolved but states that he is working with the debt relief service. He references a stable career that provides regular work, even after he moved to a new state. (FORM Response)

Applicant provided no documentation to support his assertions that his financial stability has improved. The record did not indicate that he participated in credit counseling through the debt relief company, or otherwise. He also provided no details about his current assets, employment situation, or income stream, to determine the reasonableness of his efforts to resolve his debts.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

Applicant incurred numerous debts in recent years, related to his divorce in 2018, and other matters. The debts are established by the credit reports in the record, and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or 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.

Even if they are covered by an agreement with a debt relief company, Applicant's debts are largely ongoing and unresolved. They continue to cast doubt on his current reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant stated that his delinquent debts began with his divorce, in 2018. He also was impacted by an accident in which his car was totaled. AG ¶ 20(b) therefore has some application since his finances were impacted by circumstances beyond his control. However, for full application of AG ¶ 20(b), he must also show that his subsequent actions are reasonable under the circumstances. Applicant has shown only that he has entered into a debt relief program (and has resolved one other debt). He provided no details about his payments or other arrangements with the debt relief company. He did not establish that AG ¶ 20(b) should apply.

For similar reasons, Applicant did not establish that he has undertaken a good-faith effort to resolve his debts, typically by establishing a track record of steady payments towards his creditors (through the debt relief company, or otherwise). He did not establish that AG ¶ 20(d) should apply.

AG ¶ 20(c) does not apply, as Applicant did not show that he has participated in credit counseling or that his debts are being resolved or are under control.

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(a), 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. Given the limited documentation in this case, Applicant did not provide sufficient evidence to mitigate his delinquent debts, even if they occurred due to a decline in income following his divorce in 2018. Since Applicant requested a decision on the written record, I did not have the opportunity to question him in a hearing about the status of his SOR debts, to better assess the reasonableness of his actions in addressing them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. This does not mean that Applicant cannot establish at a later date that he is taking reasonable steps to resolve his debts, but at this time, he has not shown that he has done enough to mitigate the security concerns arising under Guideline F, financial considerations due to his delinquent debts.

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

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge