



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



In the matter of:)	
)	
)	ISCR Case No. 22-00112
)	
Applicant for Security Clearance)	

Appearances

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

02/08/2023

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 April 5, 2022, 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 April 19, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 15, 2022.

The hearing was convened as scheduled on January 25, 2023. I admitted Government Exhibits (GE) 1 through 8 and Applicant Exhibits (AE) A through C in evidence without objection. At Applicant’s request, I left the record open until February 1, 2023, for him to provide documents to support his case. On January 28, 2023, he submitted AE D and E, which I admitted in evidence without objection. I received a transcript (Tr.) of the hearing on February 1, 2023.

Findings of Fact

Applicant is a 36-year-old employee of a government contractor. He has worked for his current employer since about December 2019. He earned a high school diploma in 2006. He has taken some college courses but has not earned an undergraduate degree. He has been married since 2013. He has four children, two of whom are his stepchildren. Their ages are 17, 13, 9, and 5. He served in the U.S. Army from 2007 until 2014 and the Army Reserve from 2014 until 2018. He earned an honorable discharge from both. He has held a security clearance since 2007. He has never received a warning for a security clearance violation. (Tr. 19, 21-22; GE 1, 2)

In the SOR, the Government alleged Applicant's six delinquent debts totaling approximately \$47,000 (SOR ¶¶ 1.a through 1.f). The delinquency listed in SOR ¶ 1. a was an automobile loan. The remainder of the delinquencies were credit cards. Applicant admitted the SOR allegations with additional comments. The delinquencies in SOR ¶¶ 1.a through 1.c are with the same creditor. His admissions are adopted as findings of fact. (SOR; Answer)

Applicant's financial difficulties started in about December 2017 when he lost his job because he would not agree to consecutive nine-month deployments away from his family. He made this decision after deliberating with his family and deciding he wanted to be with them more. He also did not want to miss the birth of his son. He and his family then moved across the country from State A to State B, where his extended family lives. He was unemployed until about March 2018. (Tr. 26-28; Answer; GE 1, 2)

With the exception of the auto loan in SOR ¶ 1.a, Applicant incurred the delinquent debt listed in the SOR through moving and living expenses. He could not afford to pay the SOR debts because he was unemployed. He claimed that he contacted the SOR creditors in 2017 or 2018, to make payment arrangements with them when he lost his job, but they wanted more money than he could afford while he was unemployed. He contacted the creditors in SOR ¶¶ 1.a through 1.e in August 2022 and made payment arrangements with them. He provided documents corroborating his \$400 monthly payment to the creditor of the debts alleged in SOR ¶¶ 1.a through 1.c in November and December 2022, and January 2023. He provided documents corroborating his monthly payments of \$135 to the creditor in SOR ¶ 1.d in November and December 2022, and January 2023. He provided a document corroborating that he has a zero balance on the debt listed in SOR ¶ 1.e. He paid this debt off in August 2022. He contacted the creditor in SOR ¶ 1.f in April 2022 and arranged for a \$50 automatic debit from his bank account in December 2022. He has a payment arrangement with this creditor, as well. All of the SOR debts have been resolved or are in the process of being resolved. He acknowledged that the possible loss of his security clearance motivated him to resolve the SOR debts. (Tr. 19, 25-33; Answer; GE 1, 2, 5-8; AE A-E)

Applicant claimed that in March 2021, he sold a home and paid off all of his credit cards with the exception of the debts listed in the SOR. Since then, he has opened several credit cards, lines of credit, and retail installment contracts despite claiming that

he has sufficient income to pay his expenses without borrowing. In September 2022, he financed the purchase of a truck for \$86,000, on which he pays about \$1,550 per month. In March 2022, he financed the purchase of a recreational vehicle (RV) for \$58,000 on which he pays about \$918 per month. He purchased this RV because he was living in a smaller one and wanted more room for his family. He and his family have since moved out of the RV into a home for which he pays rent of about \$1,500 per month. In January 2023, his father and cousin passed away, and he used credit to pay some of the related expenses, including helping his mother financially. While they carry a balance, none of these non-SOR credit cards, lines of credit, or retail installment contracts are delinquent. (Tr. 34-40; GE 2, 8)

When Applicant left the military in 2018, he was classified as 40 percent disabled. After making additional claims with the Department of Veterans Affairs (VA), his disability increased to 60 percent and then to 100 percent in March 2022. In April 2022, he received a lump-sum payment from the VA for about \$5,000 for retroactive disability benefits. That same month, he began receiving about \$4,280 in tax-free disability payments. At this time, his wife also began receiving about \$1,100 for an educational stipend. Applicant claimed that this influx of about \$5,000 in additional monthly income helped him pay his bills and allowed him to make payment arrangement on the SOR debts. Applicant earns \$5,900 per month in take-home salary and his wife receives \$1,000 per month for child support for his two stepchildren. He provided a copy of his working budget that shows a monthly surplus of about \$2,000. He has about \$100 in a savings account and \$2,000 in cash, so his actual savings do not match his written budget. (Tr. 31-34, 41-45; AE D)

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.

Applicant had six delinquent debts totaling about \$47,000 that were delinquent for several 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; and

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

Despite beginning to resolve his SOR debts through payment, Applicant only began making these payments in August 2022, at the earliest. There has been an insufficient amount of time in which he has been addressing these debts. The circumstance that led to his delinquencies (unemployment) ended several years ago, yet Applicant did not address these debts for years. He incurred additional, unnecessary debt, before addressing his delinquent debts. Given the surplus in his budget, he cannot account for where he spends his money. Under these circumstances, I cannot yet find that he has established a track record of financial responsibility or that his financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because he lost his job in late 2017, after he would not agree to a deployment. While he knowingly and voluntarily made the decision that resulted in his being laid off, given the circumstances of consecutive deployments away from his family, I will give him the benefit of the doubt and consider it to have resulted from conditions beyond his control. However, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these debts. The reason he gave for his financial difficulties, his unemployment, ended in March 2018. He provided no evidence why it took him over four years to address the SOR debts. Instead of addressing his delinquent debts, he incurred significant, additional consumer debt in the form of high-priced vehicles and credit cards. Despite his claim that he has about \$2,000 in surplus income each month, he only pays about \$585 per month on his significant SOR debts. Given these considerations, he has failed

to show that he acted responsibly under the circumstances and AG ¶ 20(b) does not apply.

Applicant made arrangements to pay his delinquent debts after the SOR was issued. He acknowledged that concern for his security clearance was what motivated him to do so. His unemployment ended as of March 2018, and he failed to show why he could not make payment arrangements prior to August 2022. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). While he made an effort to repay his creditors, given its timing, he has not made this effort in good faith. AG ¶ 20(d) 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 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. 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

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