



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



In the matter of:)
)
) ISCR Case No. 22-00693
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*
02/07/2023

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the Guideline F (Financial Considerations) security concern. He has several unresolved delinquent debts. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on June 2, 2021. On May 17, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. He submitted a July 21, 2022 response to the SOR, and requested a decision based upon the administrative record in lieu of a hearing (Answer).

On November 4, 2022, the Government sent Applicant a copy of the file of relevant material (FORM), dated November 3, 2022, including evidentiary documents identified as Items 1 through 7. He received the FORM on November 16, 2022, and was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond, and Items 1 to 7 are admitted into evidence without objection. I was assigned to the case on January 26, 2023.

Findings of Fact

Applicant, age 47, has been married since 2014. He has two sons, ages 15 and 17, and two adult stepsons. He graduated from high school in 1993. He has worked for his current employer, a defense contractor, since June 2013, and listed no periods of unemployment in his June 2021 SCA. He has held a DOD security clearance since approximately 2019. (Items 3, 4)

The SOR alleged that Applicant has three delinquent consumer debts totaling approximately \$21,910 and one delinquent \$1,495 medical debt. He admitted SOR ¶¶ 1.a through 1.c; however, I construed his explanations for SOR ¶¶ 1.a and 1.b as *de facto* denials, because he indicated these debts no longer appear on his “credit history.” He denied SOR ¶ 1.d. (Items 1-2)

Applicant attributed his financial problems largely to purchasing his home in June 2011.

“I bought [a] house [and] couldn’t afford anything else so I started to charge things and before I knew it I was to (sic) far behind to catch up, most of this is late fees and interest. I tried to work things out, but they wouldn’t take \$10 a week they wanted \$100s and I couldn’t afford it.” (Items 3, 7)

The debt alleged in SOR ¶ 1.a was opened in 2004, and it was charged off in the amount of \$12,840 in November 2021. The debt alleged in SOR ¶ 1.b was opened in August 2016, and it was placed for collection in the amount of \$7,055 in December 2021. In Applicant’s November 2021 response to CAF interrogatories, he indicated he had not paid or resolved either of these debts. Neither debt appear on his August 2022 credit bureau report (CBR), but he provided no documentation demonstrating he paid, resolved, or disputed them. (Item 2; Item 4; Item 6 at 2; Item 7 at 3-4)

The debt alleged in SOR ¶ 1.c was opened in October 2017, and it was placed for collection in the amount of \$2,015 in November 2021. In Applicant’s November 2021 response to CAF interrogatories, he indicated that he had not paid or resolved this debt. In his Answer, he admitted the debt, and it appears on his August 2022 CBR with an outstanding balance of \$2,059. He provided no documentation demonstrating he paid or resolved it. (Item 2; Item 4; Item 5 at 3; Item 6 at 2; Item 7 at 4)

The medical account alleged in SOR ¶ 1.d was opened in October 2017, and it was placed for collection in the amount of \$1,495 in November 2021. In Applicant’s November 2021 response to CAF interrogatories, he indicated that he had not paid or resolved this debt. In his Answer, he denied the debt and claimed the creditor “did not use the proper medical code.” This debt does not appear on his August 2022 CBR. (Item 2; Item 4; Item 6 at 2-3; Item 7 at 4)

In November 2021, Applicant’s annual salary was approximately \$90,200, and he was the sole income earner for his family. His net monthly remainder was \$245 and did not include payments toward the debts alleged in the SOR. There is no evidence in the record that he has received credit counseling. (Item 7 at 8, 11-12)

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable 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;
- (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 or provides evidence or actions to resolve the issue.

Applicant has over \$23,000 in delinquent debt. There is no evidence in the record that he has experienced unemployment or another hardship, and his only explanation for his financial problems is due to purchasing his home in 2011.

SOR ¶¶ 1.a, 1.b, and 1.d do not appear on his most recent CBR; however, according to Appeal Board jurisprudence, Applicant is responsible for providing reasonably available corroborating documentation to show debt resolution. The record is absent any evidence of an effort by him to resolve his debts or prove that the outstanding debts are not his responsibility. Accordingly, there is insufficient that he has acted responsibly to resolve his financial issues. Nor is there evidence of a good-faith effort to repay or resolve his debts.

Applicant's failure to resolve his debts indicates his financial issues are an ongoing and continuing concern. Therefore, his behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. For the forgoing reasons, Applicant failed to establish mitigation under AG ¶ 20.

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 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 conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

