



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



In the matter of:)	
)	
)	ISCR Case No. 22-00807
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
 For Applicant: *Pro se*
 01/12/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to demonstrate that he has acted responsibly to address and resolve his financial delinquencies. His lack of action reflects poor judgment. Applicant did not provide sufficient evidence to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on February 16, 2021. (Item 3) On May 4, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) On June 18, 2022, Applicant provided an answer to the SOR, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated July 21, 2022, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant received the FORM on August 1, 2022, and he was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. On September 29, 2022, the case was assigned to me.

Findings of Fact

Applicant is 45 years old. He has been divorced twice, and is currently married. He has four children, ages 18, 17, 11, and 8. He enlisted in the U.S. Marine Corps in March 2003, and completed his active duty service with an honorable discharge in March 2015. He earned an associate's degree in 2019. Since January 2021, he has worked for his government contractor employer as a logistics analyst. His employer is sponsoring Applicant for a DOD security clearance so he can perform specific job duties. (Item 3; Item 4)

The SOR alleges that Applicant is responsible for 19 accounts placed into collections, charged off, or delinquent in the total amount of \$42,456. In his Answer, Applicant admitted 14 allegations (SOR ¶¶ 1.a through 1.m, and 1.s), and he denied five allegations since these accounts had been paid. (SOR ¶¶ 1.n through 1.r) He provided an April 2022 credit report with his Answer as corroboration to show that the five paid accounts no longer appeared on the credit report. His admitted debts total \$39,521. He also provided an undated letter from a credit restoration company stating that Applicant had hired them to resolve inaccurate and fraudulent information listed on his credit profile. (Item 1; Item 2)

The SOR delinquent accounts are supported by Applicant's admissions and credit report in the record. (Item 2; Item 4; Item 5)

SOR ¶ 1.a alleges an account with an \$16,947 deficiency balance. Applicant said this debt is related to his purchase of a vehicle. He had purchased a car and it started having mechanical issues he could not afford to fix. He voluntarily surrendered the vehicle. This debt is unresolved.

SOR ¶ 1.b alleges a delinquent account with a cellular service company in the amount of \$2,644. This debt is unresolved.

SOR ¶ 1.c alleges an account placed for collection in the amount of \$1,394. This debt is unresolved.

SOR ¶ 1.d alleges a delinquent account in the amount of \$1,280. This debt is unresolved.

SOR ¶ 1.e alleges an account placed for collection in the amount of \$506. This account is unresolved.

SOR ¶ 1.f alleges an account placed for collection in the amount of \$435. This account is unresolved.

SOR ¶¶ 1.g and 1.h allege two charged off accounts (undisclosed amount.) Applicant admitted these charged off accounts.

SOR ¶ 1.i alleges a delinquent account with a collection company in the amount of \$5,150. This debt is unresolved.

SOR ¶ 1.j alleges a delinquent account from a payday loan company in the amount of \$315. This debt is unresolved.

SOR ¶ 1.k alleges a delinquent account with a property management company in the amount of \$2,358. This debt is unresolved.

SOR ¶ 1.l alleges a delinquent account with a jewelry store in the amount of \$2,261. This debt is unresolved.

SOR ¶ 1.m alleges an account placed for collection in the amount of \$1,336. This debt is unresolved.

SOR ¶ 1.n alleges a credit union account charged off in the amount of \$1,273. Applicant denied this debt since he claimed to have paid it. He provided an April 2022 credit report that no longer shows this account on the report. He did not provide a receipt or a statement from the creditor to show that he paid this account. This debt is unresolved.

SOR ¶ 1.o alleges an account placed for collection in the amount of \$771. Applicant denied this debt since he claimed to have paid it. He provided an April 2022 credit report that no longer shows this account on the report. He did not provide a receipt or a statement from the creditor to show that he paid this account. This debt is unresolved.

SOR ¶ 1.p alleges an account placed for collection by a utilities company in the amount of \$501. Applicant denied this debt since he claimed to have paid it. He provided an April 2022 credit report that no longer shows this account on the report. He did not provide a receipt or a statement from the creditor to show that he paid this account. This debt is unresolved.

SOR ¶ 1.q alleges an account placed for collection in the amount of \$323. Applicant denied this debt since he claimed to have paid it. He provided an April 2022 credit report that no longer shows this account on the report. He did not provide a receipt or a statement from the creditor to show that he paid this account. This debt is unresolved.

SOR ¶ 1.r alleges an account placed for collection in the amount of \$67. Applicant denied this debt since he claimed to have paid it. He provided an April 2022 credit report that no longer shows this account on the report. He did not provide a receipt or a statement from the creditor to show that he paid this account. This debt is unresolved.

SOR ¶ 1.s alleges an account with an \$4,895 deficiency balance for an unpaid car loan. This debt is unresolved.

On February 7, 2022, Applicant completed an interrogatory concerning the status of his finances. He disclosed that none of the 17 delinquent accounts listed in the interrogatory had been paid, or that he had made any arrangements with the creditors to pay the debt. He also completed a personal financial statement (PFS) which showed that his monthly net income was \$8,571. After deducting his monthly expenses of \$7,560, he had a monthly net remainder of \$1,011. Despite his monthly net remainder, Applicant's PFS did not show any payments were being made to his delinquent creditors. (Item 4)

Applicant provided a February 2022 personal statement disclosing that his debts accumulated over time and after years of living paycheck to paycheck. He has a son with special needs, and there were occasions his wife had to take time off from work, or had to quit her job, in order to take care of his son, which adversely affected their finances. His son eventually went to school, and his wife returned to work. She was injured on the job and received a settlement (year of accident and settlement amount not disclosed.) She was out of work for a year and she did not receive her full pay during this time. Now that she is recovered, she will return to work. They plan to use funds from his wife's settlement to resolve or settle several of their delinquent debts. (Item 4)

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 and his admissions establish 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;

(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 or provides evidence or actions to resolve the issue.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed his financial delinquencies to loss of income, expenses due to his son with special needs, injury of his spouse and underemployment. Notwithstanding the events that affected his finances, Applicant must demonstrate that he acted responsibly under the circumstances. In February 2022, he admitted in an interrogatory that he had not paid or arranged a payment plan with any of his delinquent creditors. At that same time, he submitted a PFS that showed he had just over \$1,000 monthly net remainder after paying his monthly expenses, which did not include payments to any of his delinquent creditors. His PFS showed that he had not adopted or devised a workable, realistic strategy for addressing his delinquent debts. Applicant stated that it was his intention to use funds from his wife's settlement to pay or settle his delinquent creditors in the future.

Applicant did not provide sufficient information to mitigate the financial concerns in this case. He did not provide any receipts or correspondence from the creditors to validate his claim that he had paid five delinquent accounts. He submitted an April 2022 credit report that showed five of the SOR accounts had dropped off the report. More importantly, there remains 14 outstanding accounts that are largely unaddressed. He submitted an undated letter from a credit-repair organization, which acknowledged they had been hired, but there is nothing in the record that shows he successfully disputed, settled, paid, or initiated payments on any of the delinquent accounts alleged in the SOR. Overall, I find

that Applicant has not demonstrated that he acted responsibly to address his financial delinquencies. Applicant did not provide sufficient evidence to mitigate the financial considerations security concern.

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.

Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake.

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 Applicant's lengthy career in the Marine Corps and his employment with a government contractor and 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. In the event he may wish to alleviate his financial security concerns and revisit his security clearance eligibility in the future, he should consider financial counseling, a workable household budget, and a pattern of attentiveness to his financial obligations. At the present time, Applicant did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.s: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge