



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



In the matter of:)	
)	
)	ISCR Case No. 22-01232
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns arising from his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 2, 2021. On July 15, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on July 20, 2022 and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On August 17, 2022, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1-7. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on September 6, 2022, and he did not respond to the FORM. A response was due on October 6, 2022. The case was assigned to me on December 1, 2022. Items 1-3 are the SOR, transmittal letter and receipt, and Applicant’s Answer, which are the pleadings in the case. Items 3-7 are admitted without objection.

Department Counsel submitted a draft copy of the SOR in Item 1. I requested the final-issued SOR from the DOHA administrative staff. The draft and final copies of the SOR contain the same allegations. I added the final SOR to the file and marked it as hearing exhibit (HE) 1.

Findings of Fact

In his Answer, Applicant admitted SOR allegations ¶¶ 1.a-1.d, and denied allegations ¶¶ 1.e-1.h with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 31 years old. He has one child, who is a minor. He has worked as an aerospace technician for a government contractor for the last two years. His SCA shows that he has been consistently employed since 2008. This is his first application for a security clearance. (Item 4)

The SOR alleges eight delinquent debts totaling \$31,240. The status of the debts is as follows:

SOR ¶ 1.a is an auto loan placed in collection for \$22,321. The credit report shows that it is now charged-off, and that he opened this loan in 2013. Applicant admitted the debt and stated that it was the result of an auto accident in 2016. He reported that he was in the process of changing his auto insurance when he had the accident, and he was liable for paying the loan balance of the car that he wrecked. He stated that he stopped making payments on the loan in 2016. He claims that the lender offered him a settlement agreement, but he did not have the money at the time to accept it. He admitted that his initial plan was to ignore the debt until it dropped off his credit report, but he came to realize that it was important to resolve to rehabilitate his credit score. He claimed that he is saving money so that he can make a payoff offer. This debt is unresolved. (Answer; Items 5, 6, 7)

SOR ¶¶ 1.b-1.d are student loans placed in collection totaling \$6,305. The credit report shows that the loans were opened in 2014 and 2015, and the date of last activity was November 2015. On his SCA, he reported taking classes at a technical school in 2014. Applicant admitted the debts and stated that he planned to apply for loan forgiveness. If he does not get loan forgiveness, he plans to establish a payment plan. These debts are unresolved. (Answer; Items 4, 5, 6, 7)

SOR ¶ 1.e is an account placed in collection for \$1,405. The credit report shows that it is a rental agreement that is now charged-off, which was opened in 2019, and the date of last activity was in 2020. Applicant denied this debt and claimed that it was paid. He claimed that he made a lump-sum payment on this debt in 2021 but did not provide any documentation supporting his assertion. This debt is unresolved. (Answer; Items 5, 6, 7)

SOR ¶ 1.f is a credit-card account placed in collection for \$953. The credit report shows that it is now charged-off. It was opened in 2019, and the date of last activity was in 2020. Applicant claimed that the credit card was obtained for his fiancé to use for expenses related to their child. He claims that she did not tell him that she had used the card and that a payment was due. He denies this debt and claims that it was paid but did not provide any documentation supporting his assertion. This debt is unresolved. (Answer; Items 5, 6, 7)

SOR ¶¶ 1.g and 1.h are medical accounts placed in collection for \$161 and \$95, respectively. Applicant denies these debts and claims that they were paid, but he did not provide any documentation supporting his assertion. These debts are unresolved. (Answer; Items 5, 6)

In his January 2022 background interview with a government investigator, he claimed that his monthly net income is about \$7,500, and his monthly expenses are about \$5,480. He was unsure about what happened to his monthly surplus. He reported that he did not have a monthly budget, but he planned to make one. He stated that he did not intend to have delinquent debt. He asserted that he was trying to live within his means, and help people before himself. (Item 5)

In his SOR Answer, Applicant did not provide any documentation concerning his current financial situation, such as his monthly income and expenses, and his assets. He provided no evidence that he has received credit counseling. Since 2018, he has taken four international vacations, once to Mexico and three times to Costa Rica. (Items 4, 5).

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 SOR allegations evidencing Applicant's history of financial delinquencies are established by Applicant's admissions, his background interview, and the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

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;

(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.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient evidence showing that any of the SOR debts are resolved or being paid, or that they became delinquent under circumstances that are unlikely to recur. He also failed to provide sufficient documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failure to pay his delinquent debt is recent, ongoing, and not isolated. His failure to meet his financial obligations continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶¶ 20(d) and (e) could potentially apply to SOR¶¶ 1.e-1.h. However, Applicant did not provide sufficient documentation of payment arrangements, payments made, or efforts made to dispute the debts. AG ¶¶ 20(d) and (e) do not apply.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of his delinquent debts under Guideline F.

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
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Subparagraphs 1.a - 1.h:	Against Applicant
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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.

Ross D. Hyams
Administrative Judge