



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



In the matter of:)	
)	
)	ISCR Case No. 22-01317
)	
)	
Applicant for Security Clearance)	

Appearances

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

02/13/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 7, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On October 12, 2022, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the Government’s File of Relevant Material (FORM), which was sent to Applicant on

November 21, 2022. The evidence included in the FORM is identified as Items 2-11 (Item 1 includes pleadings and transmittal information). The FORM was received by Applicant on November 30, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any response. The case was assigned to me on January 26, 2023.

Findings of Fact

Applicant admitted all of the SOR allegations (§§ 1.a-1.c, 1.e-1.l), except for § 1.d. His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 56 years old. He has worked for his current employer, a defense contractor, since November 2019, as an information systems security officer. Since 2004, he has worked for various federal contractors. He holds a bachelor's degree. He is married, since December 2020, and has one minor child. He has held a security clearance since approximately 2002. (Items 2-3).

The SOR alleged Applicant filed a Chapter 7 bankruptcy in April 2013, resulting in a discharge in July 2013 (SOR § 1.a); incurred nine delinquent debts, comprised of student loans and consumer debts totaling \$177,801 (of which approximately \$160,000 derive from his student loans) (§§ 1.b-1.j); and failed to file his 2019 and 2020 federal and state income tax returns (§§ 1.k-1.l).

Court records establish that Applicant filed Chapter 7 bankruptcy in April 2013 and his dischargeable debts were discharged later that year. He listed assets of approximately \$65,000 and liabilities of over \$181,000 in his petition. Included in his liabilities, were approximately \$100,000 of delinquent student loans. They were not discharged. Applicant received financial counseling as part of the bankruptcy process. (Items 3-4, 11)

Applicant admitted having delinquent student loans of approximately \$159,000 in his SOR answer. He further stated that he was "Pending to make arrangements for monthly payments." He failed to provide any evidence that he set up any payment plans for his student loans. His student loans were initially placed in collection in June 2014. Applicant claimed the loans were then put in deferment for a period. They were subsequently placed in collection in June 2018. (Items 4, 6, 8; SOR answer)

Applicant admitted failing to file his 2019 and 2020 federal and state income tax returns. He claimed the reason he failed to file was because he owed federal taxes in the amount of over \$6,000 and he did not have the funds to pay. He produced no evidence that he has subsequently filed his federal and state tax returns. Since Applicant's owing of federal taxes for 2019 was not alleged in the SOR, I will not use that information for disqualification purposes, but I may consider it as it relates to the applicability of any mitigating conditions and in my whole-person assessment. (Items 2-3; SOR answer)

The SOR also alleged Applicant owed seven delinquent consumer accounts totaling approximately \$17,725. (¶¶ 1.d-1.j) He admitted these debts in his background interview and in his SOR answer, except for ¶ 1.d, which he denied. That debt no longer appears on Applicant's credit reports and is resolved for him. The remaining debts are reported as delinquent debts in credit reports from February 2020, July 2021, and November 2022. He provided no documentary evidence showing that he contacted the creditors, established payment plans, or paid any of the remaining debts. (Items 3-8; SOR answer)

Applicant cited a number of reasons leading to his financial difficulties. These reasons included being told to reestablish his credit after his bankruptcy by using credit cards, experiencing job layoffs, having low paying jobs, being involved in a serious car accident, and having to deal with the death of his parents. He indicated that he sought financial counseling with a debt relief company, but failed to produce any documentation reflecting any actions he or the company took on his behalf. Applicant stated during his background interview in October 2021, that his net monthly income is \$2,576 and total monthly expenses of \$4,880, leaving a monthly deficit of \$2,123. (Items 3-4)

Policies

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 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, these guidelines are applied 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 national security eligibility 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concerns for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;

- (c) a history of not meeting financial obligations; and

- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had debts discharged by bankruptcy in 2013, has over \$150,000 of delinquent student loans, failed to pay other consumer debts, and failed to file his 2019 and 2020 federal and state income tax returns. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are ongoing and remain unresolved, with the exception of ¶ 1.d, which is resolved in his favor. His federal and state tax returns remain unfiled for tax years 2019-2020. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. On the contrary, he currently operates at a monthly deficit, spending more each month than he earns. AG ¶ 20(a) does not apply. He named several circumstances that were beyond his control that contributed to his financial problems, however, the evidence does not support a finding that he has taken responsible actions to address his debts or timely file his federal and state tax returns. AG ¶ 20(b) does not fully apply.

Applicant failed to document any efforts he made to resolve or pay his delinquent student loans. He received financial counseling through bankruptcy and also hired a debt resolution company. Despite these actions, his financial conditions are not under control. He has not shown a good-faith effort to address his debts or his federal and

state tax issues. AG ¶¶ 20(c) partially applies, but 20(d) and 20(g) do not apply, except as noted above.

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(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I considered his personal issues, but I also considered his lack of progress in resolving his debts, and his failure to timely file his 2019 and 2020 federal and state income tax returns. Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.c-1.l:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge