



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



In the matter of:)
)
) ISCR Case No. 22-01528
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 11, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on October 18, 2022. The Government withdrew SOR ¶¶ 1.a and 1.d. A complete copy of the file of relevant material (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 October 25, 2022. He responded with an undated memorandum and other documents, which I have marked collectively as Applicant’s Exhibit (AE) A. The case was assigned to me on December 28, 2022. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer since about January 2020. He served in the National Guard from 1985 until he was honorably discharged in 1992. He has been married for about 27 years. He has two adult children. (Items 4, 8)

Applicant was interviewed for a background investigation while working for a previous employer in October 2017. A credit report from that period is not in evidence, but Applicant admitted that he had several delinquent debts, including a charged-off \$5,959 debt to a credit union. He stated that he refinanced his mortgage loan, and used the proceeds to pay all of the debts in full in February 2017. The debts discussed in the interview were not alleged in the SOR and were not listed with balances on the credit reports in evidence. A credit report from January 2022 lists an account that was settled for less than the full balance in February 2017. (Items 6, 8) His statement that he paid debts in February 2017 is accepted.

Applicant was terminated from a job in April 2018 after he failed to report that a company vehicle had been in an accident. He stated that he was initially the driver, but he switched with another worker, and he was a passenger when the co-worker had the accident. Applicant asserted that he did not report the accident because he felt it was the co-worker's responsibility to report it. Applicant stated that his wife was only working part-time, and he was denied unemployment compensation because he was fired. During his unemployment, he could not pay all of his bills and several debts became delinquent. (Items 3, 4, 8)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2020. He did not report any unemployment in April or May 2018. He reported that he was employed from April 2018 until he left for a better opportunity in November 2018. He was employed from November 2018 until he left for a better opportunity in October 2019. He reported unemployment from October 2019 through December 2019. He worked for another employer from December 2019 until he started at his current position in July 2020. (Item 4)

The amended SOR alleges five delinquent debts totaling about \$23,480. Applicant owed all of the debts at one time, as established through his admissions and credit reports. (Items 3-8; AE A)

Applicant retained a law firm to assist him in managing his and his wife's debts. He entered into payment agreements to pay the \$3,666 and \$366 debts owed to the same collection company for the same bank. The original amount owed on the \$3,066 debt (SOR ¶ 1.c) is unclear, but the March 2021 credit report listed the balance as \$4,837. It was \$3,066 by the January 2022 credit report, and it was listed with a \$1,472 balance in October 2022. Applicant stated that he is making \$177 payments on the 15th of every month. (Items 3-8; AE A) That statement is accepted.

The original amount owed on the \$366 debt (SOR ¶ 1.e) is also unclear, but the March 2021 credit report listed the balance as \$1,192. It was \$336 by the January 2022 credit report, and it was listed with a \$128 balance in October 2022. Applicant stated that he finished paying this debt in August 2022. (Items 3-8; AE A) I find that account has been paid.

Applicant stated that he paid the \$105 medical debt (SOR ¶ 1.f) in November 2022. He provided a reference number. Because credit reports corroborate his statements about payments toward other debts, I find this debt is paid. (AE A)

Applicant stated that he will address the \$6,663 credit union debt (SOR ¶ 1.b) after he finishes paying the smaller debt. (Item 3; AE A)

Applicant's vehicle was repossessed in 2018 after he lost his job and was unable to maintain the payments on the auto loan. He stated that he asked the credit union that financed the loan to give him a few months until he found another job, but the credit union was unwilling to work with him and repossessed the vehicle. The credit union charged off \$13,342 (SOR ¶ 1.g), which was apparently the deficiency balance owed on the loan after the vehicle was sold. He told a background investigator in April 2022 that he missed about four payments before the vehicle was repossessed. He does not feel that he should have to pay for a vehicle that he does not own. He stated that he will continue to dispute the account. (Items 3, 5-8; AE A)

Applicant helps his daughter who lives in another state and has been unable to work because of health reasons. He and his wife took in his wife's niece who was sexually abused by her father before he kicked her out of the house. Her father is in jail. Applicant stated that his family would be under tremendous stress if he lost his job. (AE A)

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems and delinquent debts. The evidence indicates that it was initially difficult for him to pay his debts, but he has decided that he will not pay the charged-off auto loan. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

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;
- (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 taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant attributed his financial difficulties to when he lost his job in 2018, and his wife was only working part-time. He was fired because he failed to report that a company vehicle had been in an accident. That event was not beyond his control. It is also unclear how long he was unemployed. The additional financial strain brought on by financially supporting his adult daughter and taking in his wife's niece were beyond his control. I note that some financial problems predated the job loss. To Applicant's credit, he resolved them in February 2017 when he refinanced his mortgage.

Applicant retained a law firm to assist him in managing his and his wife's debts. He entered into payment agreements to pay the \$3,666 and \$366 debts before the SOR was issued. The amount owed on those debts was more than reported on the SOR because he had already started paying them. The \$366 debt (SOR ¶ 1.e), originally at least \$1,192, has been paid. The \$3,066 debt (SOR ¶ 1.c), originally at least \$4,837, is being paid through \$177 monthly payments. The balance in October 2022 was \$1,472. The \$105 medical debt (SOR ¶ 1.f) was paid in November 2022. Those three debts are mitigated.

Applicant stated that he will address the \$6,663 credit union debt (SOR ¶ 1.b) after he finishes paying the smaller debt. There is no indication that he has any intention to pay the charged-off \$13,342 auto loan (SOR ¶ 1.g). He stated that he asked the credit union to give him a few months until he found another job, but the credit union was unwilling to work with him and repossessed the vehicle. However, he told the background investigator that he missed about four payments before the vehicle was repossessed. That was at least a few months, and based upon the SF 86, it was longer than he was unemployed.

This is a close case, but 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." There is insufficient evidence for a determination that Applicant's remaining financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay the remaining debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions, individually or collectively, are insufficient to eliminate concerns about Applicant's finances.

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. 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
Subparagraph 1.a:	Withdrawn
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	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.

Edward W. Loughran
Administrative Judge