



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



In the matter of:)	
)	
)	ISCR Case No. 20-03691
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *pro se*

01/17/2023

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On December 1, 2021, in accordance with Department of Defense (DOD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. (Item 1) The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have his case decided on the written record, in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on April 29, 2022. Applicant received the FORM July 21, 2022. Applicant answered the SOR, but did not respond with additional information after receiving the FORM. The Government’s evidence included in the FORM and identified as (Items 1 through 5), is admitted without objection. The case was assigned to me on November 17, 2022. Based

on my review of the documentary evidence, I find that Applicant has not mitigated financial consideration security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.a through 1.m with explanations. (Item 2) Applicant, age 49, is divorced and does not have any children. (Item 3) He served in the U.S. Marine Corps from August 1992 until September 1992 and reported an honorable discharge. He served in the U.S. Army on active duty from March 1996 until September 1997 with an honorable discharge. He was in the Army Reserve from March 2004 until June 2006, and reported on his SCA that he received a discharge other than honorable. (Item 3)

Applicant attended a technical institute from September 2010 to March 2013, with a break, and from June 2013 to March 2015. He was taking evening class while he worked. The institute closed while he was in school and he did not receive a diploma. He has worked for his current employer since February 2019 as a technician. (Item 3). Applicant completed his security clearance application on May 24, 2021. (Item 3)

FINANCIAL

The SOR alleges that Applicant has thirteen delinquent accounts in the amount of approximately \$41,500. The majority of the debts are collection accounts for student loans, two medical accounts, and charged-off consumer accounts. (Item 1)

In his subject interview, Applicant reported that he is working with a financial coach to organize his debts from high priority to least priority. However, he is not establishing a repayment plan nor working with creditors to lessen the debt. (Item 4) He also reported to the investigator that he failed to file and pay 2018 Federal and state taxes. He did not ask for an extension and is trying to collect tax information from 2018. He has not made any efforts to resolve the issue. (Item 4) This is not alleged on the SOR, however in light of the whole person it is considered. (Item 4)

As to SOR allegation ¶ 1.a, a collection account in the amount of \$11,076, Applicant stated that he was not aware of this account and he is disputing it. He stated that he never resided at this complex. He reported that it is now off his credit report.

As to SOR allegations ¶¶ 1.b, through 1.f, and 1.h-1.i are collection accounts for Department of Education student loans, Applicant submitted a letter, dated September 13, 2021 stating he was relieved of his obligation to pay and that the credit bureaus remove all information reported by the Department regarding this debt from your credit bureau report. This is the result of a scandal and closure of the institute that Applicant attended. I find for Applicant on these accounts.

As to SOR allegation ¶1.g, a collection account in the amount of \$2,929, Applicant stated he was not aware of this account and is disputing it. He also noted that he would

contact the creditor and if it was his account, he would make arrangements to satisfy the debt. (Item 5).

As to SOR allegation ¶ 1.j a charged-off account in the amount of \$450, Applicant admitted the debt and stated that he is disputing the account. The current balance has not changed. (Item 6) This appears to be a car loan and is on his credit report. (Item 5).

As to SOR allegation ¶ 1.k a charged-off account in the amount of \$432, Applicant stated that this was his ex-wife's account that she opened in his name. He stated that he fought to have it removed from his credit report and it no longer appears on the report. (Item 3) He submitted a copy of dispute packet from a partial credit report that reflected the account was not paid. However, the credit report states that it was charged off. (Item 5)

As to SOR allegations ¶¶1.l and 1.m, medical accounts for \$152 and \$126, Applicant stated these were for hospital visits and should have been paid by the VA. He is not sure why they appear on his credit report. However, they have been removed from his 2021 credit report.

Applicant stated that he is now working with someone to "get his credit in a better space than what it has been over the years. He also has been disputing several accounts." (Item 5) For the other debts listed in the interview and his SCA, he would like to set up payment plans.

There is no information in the record that he received financial counseling or has a budget. He did not produce sufficient evidence to mitigate his case, Although, not listed on the SOR, Applicant told the investigator that he had not filed his 2018 Federal and State taxes and has not done anything to resolve the issue. (Item 5)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not attribute his financial problems to a singular incident or a period of time that caused financial hardship. He gave no insight into the reasons for his accumulation of debt. He either disputed the debts or stated that they had been removed from his credit report. He mitigated the student loan debts with the documentation from the Department of Education who discharged the student loans of students who were victimized by predatory lending practices of the technical institute under AG 20(b). He did not participate in credit counseling and there are no clear indications that the remaining debts are under control. None of the debts are being paid through payment plans. There is insufficient evidence to establish other above mitigating conditions apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the

applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and Applicant's military service and devotion to his country, I conclude that Applicant has not presented sufficient mitigation. He disputed many debts and relied on the fact that some have fallen off his credit report. However, his student loans are mitigated. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraphs 1.j - 1.m	Against Applicant
Subparagraphs 1.b- 1.f:	For Applicant
Subparagraphs 1.h – 1.i:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge