



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



In the matter of:)	
)	
)	ISCR Case No. 22-01892
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2023

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 October 6, 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 October 20, 2022, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2022.

The hearing was convened as scheduled on January 4, 2023. Government Exhibits (GE) 1, 2, 4, 5, and 6 were admitted in evidence without objection. The objection to GE 3 was sustained. Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted an email and attached documents that I have marked AE B, C, and D and admitted without objection.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. He has worked for his current employer since January 2022. He is attending college in pursuit of a degree. He has never married, and he has no children. (Transcript (Tr.) at 19, 28; GE 1)

Applicant had a sales job from 2008 to 2018 in which commissions were a large part of his compensation. His sales declined as did his compensation, and he had to find another job. He was unable to pay all of his bills and several debts became delinquent. (Tr. at 17-18, 25; GE 1)

Applicant paid or settled debts of \$80; \$1,148; and \$1,994. (GE 4-6) These debts were not alleged in the SOR as they were resolved before the SOR was issued.

The SOR alleges a \$29,476 charged-off loan from a credit union and a \$416 debt placed in collection by a cellular telephone services company. Applicant settled the \$416 debt for \$249, which was paid on December 27, 2022. (Tr. at 23-24; Applicant's response to SOR; GE 4-6; AE A)

Applicant borrowed about \$32,000 from a credit union in 2016, which he used to buy a boat. The loan was not secured, and there was no lien on the boat. He stopped paying the loan in 2018, and the credit union charged off \$29,476. He stated that he contacted the credit union about the debt, but the credit union was unwilling to settle the debt for less than the full balance, and it was unwilling to go beyond 24 months for him to pay it. Applicant stated that he did not have the \$1,400 per month that it would take to pay the full amount over 24 months. He sold the boat for about \$18,000. He did not use any of the proceeds of the sale to pay the loan, as he needed the money for living expenses. (Tr. at 18-19, 24-29; Applicant's response to SOR; GE 1, 2, 4-6)

Applicant did not file his federal and state income tax returns for tax year 2018 when they were due.¹ He filed the returns in August 2022. He does not owe the IRS, and he is on a payment plan with his state. (Tr. at 29-32; GE 1, 2; AE B-D)

Except for the unpaid SOR debt, Applicant's finances have improved. He asserted that he has changed his spending habits since 2018 to ensure that his finances remain in order. (Tr. at 19-23, 27; GE 4-6)

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,

¹ The SOR did not allege any tax issues. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the application of mitigating conditions and in the whole-person analysis.

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.

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

Applicant had a sales job from 2008 to 2018 in which commissions were a large part of his compensation. His sales declined as did his compensation, and he had to find another job. He was unable to pay all of his bills and several debts became delinquent, most prominently the loan that he used to buy a boat. Applicant is credited with resolving several debts before the SOR was issued, and he settled the \$416 cellular telephone services debt on December 27, 2022. That debt is mitigated.

The credit union debt is more problematic. Applicant sold the boat for \$18,000, but he did not use any of the proceeds to make a payment to the credit union. His finances are better, but it took him to August 2022 to file his 2018 federal and state tax returns, and he is still paying the state the past-due taxes owed for that tax year.

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 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 his 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 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:	Against Applicant
Subparagraph 1.b:	For 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