



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



In the matter of:)	
)	
)	ISCR Case No. 21-00796
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2023

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 December 10, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On February 4, 2022, Applicant answered the SOR, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 19, 2022. The originally assigned judge had a conflict and I was assigned to the case on November 8, 2022. The hearing was convened as scheduled on November 28, 2022, using video teleconferencing capabilities. The

Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list was marked as Hearing Exhibit (HE) I and its discovery letter was marked as HE II. Applicant testified, but he did not offer any exhibits at the hearing. The record remained open after the hearing and Applicant timely submitted Applicant Exhibits (AE) A1-A7, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 7, 2022.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a federal contractor. He began working at his present job in December 2005. Before that he served in the U.S. Navy for nine years, after which he was honorably discharged. He has an associate's degree. He is married and has four adult children, three who still live at home and who he supports financially. He has held a security clearance without incident for approximately 27 years. (Tr. 6, 17, 30; GE 1)

The SOR alleged 16 delinquent accounts (credit cards) totaling approximately \$96,500. (SOR ¶¶ 1.a – 1.p) The debts are established by credit reports from March 2022 and April 2020; and his SOR admissions. (GE 2-3; Answer to SOR)

Applicant's financial difficulties can largely be attributed to some major issues related to his wife's behavior. Sometime after 2010, his wife became addicted to prescription pain pills. It is unclear, but apparently she was arrested on drug-related charges. Applicant struggled to support the family during this time. His wife went to drug rehabilitation at some point, paid for by Applicant. In addition to his wife's drug issues, she ran a day care center out of her home and was charged with felony child endangerment (no further information provided) in approximately 2017. Applicant stated he was forced to use the family's financial resources to pay his wife's bail bond and attorney's fees resulting from the felony charge. He estimated that these expenses totaled approximately \$40,000-\$50,000. He used credit cards to fund these payments. Before these expenditures, he had a total balance owed on all his credit cards of about \$45,000. (Tr. 17, 20, 22)

He has settled three credit card debts as described below (SOR ¶¶ 1.g, 1.i, and 1.o), but he has failed to make any efforts to pay or contact any of the remaining creditors. His rationale for inaction was that some of the debts were past or near the state's statute of limitations and are, or will become unenforceable. With this in mind, he did not want to start paying towards these debts and restart the clock if he might lose his job because his clearance was not granted. So, he did nothing toward paying those debts. He contacted an attorney about the possibility of filing for bankruptcy protection, but he decided against pursuing that option because he did not know how that might impact his security clearance. (Tr. 18, 23-24, 28-29; AE A1-A7)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$20,059. This credit-card debt became delinquent in October 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.b-\$16,354. This credit-card debt became delinquent in October 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.c-\$15,727. This credit-card debt became delinquent in November 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.d-\$14,470. This credit-card debt became delinquent in November 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.e-\$7,505. This credit-card debt became delinquent in November 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.f-\$4,705. This credit-card debt became delinquent in October 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.g-\$4,701. This credit-card debt was assigned for collection in June 2018. Applicant admitted this debt and presented documentation showing he settled this debt in February 2022. This debt is resolved. (GE 2-3; AE A1-A2; Answer to SOR)

SOR ¶ 1.h-\$3,860. This credit-card debt became delinquent in October 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.i-\$1,724. This credit-card debt was assigned for collection in November 1997. Applicant admitted this debt and presented documentation showing he paid this debt in January 2022. This debt is resolved. (GE 2-3; AE A3-A5; Answer to SOR)

SOR ¶ 1.k-\$1,304. This credit-card debt became delinquent in October 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.l-\$1,268. This credit-card debt became delinquent in April 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.m-\$1,111. This credit-card debt became delinquent in April 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.n-\$1,054. The last payment date for this credit-card debt was in October 2017. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

SOR ¶ 1.o-\$831. This credit-card debt became delinquent in January 2020. Applicant admitted this debt and presented documentation showing he settled this debt in April 2022. This debt is resolved. (GE 2-3; AE A6-A7; Answer to SOR)

SOR ¶ 1.p-\$388. This credit-card debt became delinquent in October 2018. Applicant admitted this debt and it remains unpaid. This debt is unresolved. (GE 2-3; Answer to SOR)

All of the above resolved delinquent debts were paid after the issuance of the SOR in December 2021. Applicant testified that his current gross annual income is approximately \$123,000 and that his wife's current gross income is approximately \$45,000 annually. They own a home and are current on their monthly payments. He believes he has approximately \$150,000 of equity in the home. He claimed that he typically has approximately \$1,000 left over at the end of the month after paying all his bills. He has approximately \$150,000 in a retirement account and \$3,000 in a savings account. He did not present a written budget. (Tr. 19, 26; AE A1-A7)

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 concern 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;
- (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 difficulties dating back several years. He incurred 16 delinquent debts totaling approximately \$96,500. Thirteen of the debts remain unpaid. Applicant testified that he had the resources to pay the debts, but chose not to do so. Applicant's admissions and credit reports establish the debts. I find all the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of 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; and

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

Applicant's debts are recent because they are ongoing. Although he paid or settled three of the debts, he failed to address the remaining debts, which comprise the majority of the overall debt amount. Additionally, all of the debts were not paid until after the issuance of Applicant's SOR in December 2021. AG ¶ 20(a) is not applicable.

Applicant presented evidence that the debts were affected by circumstances beyond his control, namely, his wife's legal and drug problems. However, he did not act responsibly concerning the debts when he failed to resolve them in a timely fashion. AG ¶ 20(b) has some application, but does not fully apply.

Applicant presented no evidence of financial counseling. His track record to date does not support a good financial picture. Additionally, he admitted making a conscious choice not to pay the debts in order to keep the statute of limitations defense available to him. Based upon his past history, there is no reason to believe that he will right his financial ship in the future. While he did resolve three debts, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.g, 1.i, and 1.o.

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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military and contractor service, and his wife's legal and drug problems that led to his financial problems. However, I also considered that he has not adequately addressed his delinquent debt. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated 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
Subparagraphs: 1.a-1.f, 1.h, 1.j-1.n, 1.p:	Against Applicant
Subparagraphs: 1.g, 1.i, 1.o:	For Applicant

Conclusion

In light of all of 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