



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



In the matter of:)	
)	
)	ISCR Case No. 20-03615
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On December 7, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on January 22, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 15, 2022.

The hearing was originally scheduled for January 26, 2023. However, as Applicant had not received the Government’s evidence, I continued the hearing until February 17, 2023. On February 17, 2023, the hearing was convened as rescheduled. At hearing, I admitted Government Exhibits (GE) 1 through 9 and Applicant’s Exhibit (AE) A in evidence without objection. Applicant also provided testimony. I received a transcript (Tr.) of the hearing on February 27, 2023.

Findings of Fact

Applicant is a 46-year-old employee of a government contractor. Except for a week in August 2022 when he relocated, he has been continuously employed since 2005. He was divorced twice and remarried in 2012. He has two children, ages 19 and 18, and an adult stepchild. He served on active duty with the Army from 1995 until 2000, when he was honorably discharged because of a medical disability. (Tr. 23, 66; GE 1, 6)

In the SOR, the Government alleged Applicant's 32 delinquent debts totaling approximately \$16,500 (SOR ¶¶ 1.a-1.ff). SOR ¶¶ 1.a-1.c, 1.e-1.g, 1.i-1.k, 1.s, and 1.t are consumer accounts. The remainder of the SOR debts are delinquent medical accounts. The delinquent consumer accounts total about \$10,000. These consumer delinquencies consist of vehicle loans, credit cards, personal loans, and unreturned satellite TV equipment. The delinquent medical accounts combine for a total of about \$6,500. Applicant admitted the SOR allegations, except for SOR ¶¶ 1.c, 1.g, 1.j, 1.s, and 1.t, which he denied without additional comment. His admissions are adopted as findings of fact. Despite his denials of the allegations in SOR ¶¶ 1.c, 1.g, 1.j, 1.s, and 1.t, those allegations are established by the Government's 2018, 2019, 2020, 2022, and 2023 credit reports. (Tr. 61-64; SOR; Answer; GE 1-9)

Over the last decade, Applicant and his wife had significant, often life-threatening health issues. In November 2013, Applicant tore his Achilles tendon and missed a month and a half of work. In 2014, Applicant's wife had heart issues, causing her to faint. After about six months of missed diagnoses, doctors correctly diagnosed her condition and inserted a pacemaker. Applicant and his wife lived in a remote area, so, on three occasions, she had to be medevacked by helicopter to a hospital that had the capability to treat her heart condition. As a result of this health issue, she lost her job and has not had a job that paid as much since. In 2015, Applicant's appendix burst. His heart stopped twice, but doctors were able to revive him. He was in a coma for 28 days. He missed about 70 days of work. In 2017, his wife was once again medevacked to a hospital for what doctor's believed was a ruptured appendix, where she was treated for five days. Each medevac flight cost tens of thousands of dollars that was not covered by insurance. While these debts are not part of the SOR as they are his wife's, Applicant has been using his income to pay them off. In August 2020, his wife was diagnosed with stage four lung cancer which required chemotherapy and radiation. She has been unable to work to contribute to the household finances since that cancer diagnosis. While he and his wife had health insurance throughout this time, the cost of uncovered treatment, along with the ancillary costs of travel and missing work has overwhelmed them. (Tr. 24-25, 27, 35, 39-43, 66-67; Answer; GE 1, 5)

In about 2019, Applicant hired a bankruptcy attorney to resolve his debts through a Chapter 13 bankruptcy petition. After following his attorney's advice and allowing creditors to repossess two vehicles, his bankruptcy attorney told him that he made too much money to file Chapter 13 bankruptcy, so he decided not to file. (Tr. 36-39; 41-42, 61-64; GE 1)

Applicant claimed that he took his current position working in Country A because he would earn twice as much money as he has ever earned in his life. He planned to use the additional wages to pay his delinquent SOR debts. He began working his current job in about August 2022. For the first five and a half months after he started his new job he earned about \$3,600 per month. He was living in a hotel in the U.S and was not yet earning his overseas pay. In about December 2022, he began working overseas. Since then, he has been earning about \$10,000 per month. He has about \$300 in a savings account and about \$2,000 in a checking account. He has about \$2,000 to \$3,000 in a retirement account. (Tr. 24, 32-36, 39-41, 46-49, 60-62, 73-74; Answer; GE 5)

For the last year and a half to two years, he has been paying down his wife's medical debts through a debt consolidation company. He has been paying \$150 per month through an automatic bank account debit. Applicant thought he was also paying down his own debts but recently learned that his debts were not part of the consolidation plan. The record is silent as to why his debts were not included or when he learned this information. He claimed he will include his debts in the consolidation plan and begin paying them back immediately. As of his DOHA hearing, he had yet to make any payments on his SOR debts. With exception of the SOR debts listed below, he has not attempted to contact creditors or credit reporting agencies to resolve the SOR debts. Except for the debt in SOR ¶ 1.t, he has not resolved any of the SOR debts. (Tr. 24, 32-36, 39-41, 46-49, 60-62, 73-74; Answer; GE 5)

Applicant claimed that he contacted the creditor for the debts alleged in SOR ¶¶ 1.g and 1.j once about two months ago and again about two weeks ago. He claimed that he has paid this debt. He claimed there is a miscommunication between the local and the national offices of this creditor whether he has paid this account. He provided no documents to corroborate this payment or his efforts to resolve his dispute. Applicant claimed that he contacted the creditor of the debt listed in SOR ¶ 1.f a week before the DOHA hearing to make payment arrangements, but he could not reach an agreement with them. On an unspecified date, he claimed he contacted the creditor in SOR ¶ 1.t to attempt to resolve that debt. He claimed the debt was for satellite TV equipment that he claimed he returned. He provided no documentation to corroborate his attempt to resolve this debt. However, based on his testimony, I find that he returned the equipment. This debt is resolved. (Tr. 49-58, 61-63)

Applicant has three delinquent debts on his credit reports that are not listed in the SOR. In the last week, he contacted the creditor of two of these debts and one of these creditors contacted him. He did not make any payment arrangements with these creditors or otherwise resolve these debts. Any adverse information not alleged in the SOR, such as Applicant's additional financial delinquencies cannot be used for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). (Tr. 49-60)

Applicant claimed that prior to receiving his SOR, he did not believe that his financial delinquencies would affect his security clearance. He claimed that in about November 2022, his employer inaccurately told him that his clearance application was approved. Based upon this inaccurate information, he thought he had more time to resolve his financial delinquencies to avoid any ill effect on his security clearance. (Tr. 70-72)

Applicant provided a character reference letter from his work supervisor. His supervisor opined that Applicant is honest, responsible, and reliable. He noted that Applicant does well at work and is very professional. He believes Applicant should be granted a security clearance. (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; and
- (c) a history of not meeting financial obligations.

Applicant has 32 delinquent debts totaling about \$16,500 that have been delinquent for years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;

(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 a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial delinquencies are ongoing and therefore recent. The evidence does not show that the debts are resolved or are under control. He has not established a track record of financial responsibility. I cannot find his financial issues are unlikely to recur. If he does as he has claimed and resolves his debts, he may be able to meet this mitigating condition in the future. However, his future intentions are insufficient. I also note that despite earning about \$20,000 in two months, he only has about \$2,300 in his bank accounts without paying toward his SOR debts. These balances cause me to question his ability to meaningfully resolve his debts in a timely fashion. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of his and his wife's serious health problems. These conditions were clearly beyond his control and he and his wife have certainly been dealt a bad hand. However, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these debts. I recognize he did not think he could make payment arrangements until after he made sufficient wages through his new job. I also recognize that he intends to resolve these debts in the future because he now makes more money. However, he has not provided sufficient evidence to show that he could not make any payments on these debts before his current employment. He still has not made any payments after earning about \$20,000 in two months. He still has not resolved debts that he disputed. Given these considerations, he failed to provide sufficient evidence that he acted responsibly under the circumstances and AG ¶ 20(b) does not apply.

Applicant has not made payments on any of his SOR debts. There is evidence that when he thought his clearance would not be affected, he was not motivated to resolve his delinquent debts. AG ¶ 20(d) does not apply.

Applicant disputed owing the debts in SOR ¶¶ 1.c, 1.g, 1.j, 1.s, and 1.t. He claimed that he did not recognize the debts in SOR ¶¶ 1.c and 1.s. However, he did not contact the creditor or credit reporting agencies to dispute those debts. He claimed that

he paid the debts in SOR ¶¶ 1.g and 1.j. However, he provided no documents to corroborate any payments. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). He claimed that he contacted the creditor in SOR ¶ 1.t to dispute the account because he returned the creditor's equipment. While he has not provided documented proof to substantiate the dispute, his claim that he does not owe the debt because he returned the equipment is reasonable. His testimony that he returned it and contacted the creditor is evidence of his action to resolve the issue. AG ¶ 20(e) applies to the allegation in SOR ¶ 1.t, but not to any of the other SOR allegations.

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. I have also considered Applicant's military service and his positive character reference.

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
Subparagraphs 1.a-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u-1.ff	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.

Benjamin R. Dorsey
Administrative Judge