



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXX)	ISCR Case No. 21-02364
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the national security concerns arising from his problematic financial history. He did provide sufficient evidence to mitigate the national security concerns arising from his personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on June 22, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on January 28, 2022, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The DOD CAF acted 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on May 10, 2022 (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and

Appeals (DOHA). On July 25, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. Applicant was sent the FORM on August 1, 2022, and he received the FORM on August 10, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in the case. Items 3 through 8 are admitted without objection. The case was assigned to me on November 17, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old, married (since September 1993), and has an adult son and an adult daughter. He is a high school graduate. He served in the Inactive Reserve of his state's Army National Guard from June 1990 until June 1994, when he was honorably discharged. Since March 1990, he has worked for a defense contractor. (Item 3.)

Guideline F

Under Guideline F, the SOR alleged that Applicant has 16 delinquent debts totaling about \$36,000, a total that includes a \$12,550 debt for state taxes (2016, 2017, and 2018). (Item 1.) Applicant's credit reports (8/2020, 3/2021, 6/2022) support the Guideline F allegations. (Items 5 through 7.) He admitted SOR ¶1.a, a voluntary car repossession (\$11,612), and SOR ¶ 1.p, the state tax allegation. For the latter, he said he is paying \$500 per month to pay it off; the balance is \$5,300. He provided documents showing his paycheck deduction for the tax debt but none showing the balance due. His payments are under an involuntary tax levy. He denied SOR ¶ 1.b (\$468), because "I have not seen a collection letter." He denied medical accounts SOR ¶¶ 1.c through 1.n (\$5,800 combined), because he has "not seen collection letters." He denied SOR ¶ 1.o, a consumer debt (\$8,615), because he does "not recall this collection." (Items 2 and 8.)

Applicant's financial problems began in 2011 when his wife lost her longstanding government job. The medical accounts are for his wife's medical condition. Her lost income was aggravated by a "health issue that caused her not to have a stable income." (Items 4 and 8.) The record supports the Guideline F allegations. (Items 4-8.) During his September 24, 2020 Personal Subject Interview (PSI), Applicant said his delinquent accounts would be paid, settled, or satisfied within 60 days of the PSI, or he would file for bankruptcy. (Item 8.) Neither has occurred. (Items 6 and 7.) His collection accounts show last activity dates in the summer of 2020 and became delinquent at that time. (Items 4 through 8.)

Applicant submitted a Personal Financial Statement. It showed a total net monthly income of \$8,820. After expenses and debt service, his monthly net remainder was \$1,985. (Item 4.)

Guideline E

Under Guideline E, SOR ¶ 2.a alleged that although Applicant answered “yes” that he had accounts that were in collection or charged off, he failed to disclose the specific information alleged in SOR ¶¶ 1.a through 1.n. (Item 1.) He admitted that allegation, stating that over the “last few years my wife and I have been trying to reconcile these issues . . . looking for a good solution on a re-fresh program or possibly bankruptcy . . .” (Item 2.) In his SCA, he disclosed the state tax delinquency, its estimated amount, and when it will be paid off. (Item 3.) In his PSI, he testified in some detail about the delinquent debts that were ultimately alleged in the SOR. (Item 8.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) history of not meeting financial obligations; and
- (f) failure to . . . pay state . . . income tax as required.

Applicant's SOR debts are established by the Government's credit reports and Applicant's admissions. AG ¶¶ 19(a), (c), and (f) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

- (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

Most of Applicant's SOR accounts became delinquent in 2020. That is not that long ago. And they remained in default when the SOR was issued. Also, those debts were not infrequent. Thus, AG ¶ 20(a) does not apply to mitigate those debts.

Mitigating factor AG ¶ 20(b) has two principal elements. First, there must be "conditions" "largely beyond the [applicant's] control" that caused the financial problem. Second, the applicant must have "acted responsibly" under the adverse circumstances he confronted.

The loss of Applicant's wife's job was complicated by her subsequent medical condition. Those events caused financial hardship. They were "largely beyond" Applicant's control, thus satisfying the first element of AG ¶ 20(b).

The next inquiry is whether Applicant acted responsibly under those adverse circumstances. In this case, it does not appear that Applicant made any efforts to contact unpaid creditors or otherwise resolve his debts. His promises to pay in the future are not recognized by the Appeals Board as mitigating factors. See, e.g., ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015) The second element of AG ¶ 20(b) is not satisfied. Applicant's SOR debts are not mitigated under AG ¶ 20(b).

Applicant is paying his state tax debt under an involuntary tax levy. The satisfaction of a debt through involuntary payments, such as a tax levy, is not the same as a good-faith initiation of repayment by the debtor. See, e.g., ISCR Case No. 16-03122 at 3 (App. Bd. Aug. 17, 2018). Therefore, mitigating condition AG ¶ 20(d) does not apply. Nor does AG ¶ 20(d) apply to the other debts in the SOR

None of Applicant's SOR debts have been resolved or mitigated. I find against Applicant on SOR ¶ 1.

Guideline E - Personal Conduct

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." A statement or omission is false or dishonest when it is made deliberately (knowingly and willfully).

In this case, the SOR alleged that Applicant deliberately falsified facts by failing to disclose the details of the debts alleged in SOR ¶¶ 1.a through 1.n. This conduct falls within AG ¶ 16(a), which states in pertinent part:

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations.

The narrower question is whether Applicant's omission in his SCA was deliberate. He admitted this allegation in his Answer. But in his SCA, he answered "yes" to whether he had any routine accounts that were delinquent. He also identified his state tax liability, its amount, and the expected date of its pay-off. The record shows that his failure to provide details of each delinquent account did not impede or impair the investigation. His "yes" answer sufficiently alerted the investigators to look further into his financial background, which they did. The results of that further inquiry were then embodied in the SOR. I find that Applicant did not deliberately omit those specific details from his SCA. I find in favor of Applicant on SOR ¶ 2.

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.

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 and Guideline E in my whole-person analysis.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For those reasons, I conclude that Applicant has not mitigated the security concerns arising under Guideline F, financial considerations. Security concerns arising under Guideline E, personal conduct, are not established.

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.-p.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge