



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



In the matter of:)	
)	
)	ISCR Case No. 22-00992
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not deliberately falsify his security clearance application, so personal conduct security concerns are not established. He failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 5, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). 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 on September 9, 2022 (Answer). He elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on September 21, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 17, 2022. He did not submit a

response. The case was assigned to me on January 18, 2023. The Government's documents, identified as Items 1 through 7 in its FORM, are admitted in evidence without objection.

Findings of Fact

Applicant admitted the SOR allegations in his Answer. He is 42 years old. He is married and he has one child, a minor. He previously owned a home between September 2003 and October 2021. As of his October 2021 security clearance application (SCA), he has owned a home since July 2012. He attended college from 2009 to 2021 but did not earn a degree. He has worked as an electronic technician for his employer, a DOD contractor, since February 2006. He was granted a security clearance in 2012. (Items 1-2)

The SOR alleges that Applicant had a \$12,558 delinquent consumer debt and a \$40 delinquent medical debt. (SOR ¶¶ 1.a and 1.b) The SOR also alleges that Applicant falsified his response to questions in section 26 of his 2021 SCA, which inquired about financial delinquencies, when he failed to disclose SOR ¶ 1.a and an unalleged \$54,756 past-due mortgage account. (SOR ¶ 2.a) In addition to his admissions in his Answer, Applicant discussed his delinquent debts in his January 2022 and February 2022 interviews with a background investigator, and in his June 2022 response to interrogatories. SOR ¶¶ 1.a and 1.b, and his past-due mortgage account referenced in SOR ¶ 2.a, are reported in a December 2021 credit bureau report. SOR ¶¶ 1.a and 1.b are also reported in a September 2022 credit bureau report. Incident reports from the Defense Information System for Security Case Adjudication Tracking System also reflect Applicant's delinquent debts. (Items 1-7)

SOR ¶ 1.a is for a charged-off credit card. Applicant indicated during his background interviews that he neglected to set up auto-payments after this account was transferred to a different servicer. He then forgot about it because he did not receive any notices from the creditor about a delinquent balance, and he was unaware it was delinquent. He intended to contact the creditor to resolve this debt. He stated in his response to interrogatories that he had not made efforts to resolve this debt. (Item 3)

SOR ¶ 1.b is a medical debt for a 2020 emergency room visit. Applicant indicated during both of his background interviews that he forgot about this debt, and he was unaware it was delinquent. He thought his medical insurance paid it and he was never billed for it. He intended to contact the creditor to pay this debt. He failed to provide documentation to corroborate his efforts at resolution. (Item 3)

Applicant maintained during his February 2022 background interview that he did not intend to deceive by failing to disclose his past-due mortgage account on his SCA. He indicated that this mortgage is for his primary residence. In late 2019, he made an error when he attempted to rearrange his automatically deducted monthly mortgage payment on the creditor's website. His last mortgage payment was auto deducted in December 2019, and he made no subsequent mortgage payments. He indicated that he attempted to correct his mistake on multiple occasions during the COVID-19 pandemic,

but he never received a live representative when he contacted the creditor's customer service department. He acknowledged that he was neglectful and irresponsible in failing to continue to follow up with the customer service department. In early 2022, he reached a live representative who arranged for him to make a \$63,890 payment at a retail branch, which brought his mortgage current. He was able to make such a payment because his "budgeted mortgage payment fund was still in my account," and he used savings to pay the penalties. He indicated that he likely completed his SCA during the period when he was trying to reach the creditor, and his mortgage was not on his mind. (Item 3)

Applicant indicated during his February 2022 background interview that his monthly net income was \$5,881, and that his monthly net remainder after expenses was \$2,173. He indicated that he had assets totaling \$1,291,260. He described his financial situation during his background interviews as stable and indicated that he had a budget. He planned to timely pay his debts. He had not received credit counseling. He traveled to Ireland for tourism in 2009 and 2019, and to Canada in 2011. (Items 2-3)

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 access to classified information 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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 pertaining to 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered as relevant ¶ 19(a), an “inability to satisfy debts,” ¶ 19(b), an “unwillingness to satisfy debts regardless of the ability to do so,” and ¶ 19(c), “a history of not meeting financial obligations.” Applicant has a history of not paying his debts despite having the means to do so. AG ¶¶ 19(a), 19(b), and 19(c) are established.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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.

Conditions beyond Applicant's control did not contribute to SOR ¶ 1.a, as Applicant admitted that this debt became delinquent due to his own neglect. However, such conditions contributed to his medical debt in SOR ¶ 1.a, as he believed his medical insurance paid this debt and he was not billed for it. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under the circumstances. Applicant failed to do so. Although he indicated during his background interviews that he intended to contact the creditors to resolve both debts, he did not provide documentation to corroborate his efforts. He has not received financial counseling. His monthly net remainder demonstrates that he has the financial means to take steps toward debt resolution, and yet he has not done so. I find that Applicant's unwillingness to address his debts continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not established.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement,

or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intend to falsify his SCA by failing to disclose SOR ¶ 1.a and his past-due mortgage account. He forgot to set up auto-payments for SOR ¶ 1.a after the account was transferred to a different servicer, and then he was unaware it was delinquent because he did not receive any notices from the creditor. He did not think about his past-due mortgage when he completed his SCA, as he was unable to follow up with his mortgage company's customer service department during the COVID-19 pandemic to correct his error for his automatic monthly mortgage payments. I find that he did not deliberately falsify his response to section 26 of his SCA. AG ¶ 16(a) is not established.

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 have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not deliberately falsify his SCA, but he did not mitigate the financial considerations security concerns arising from his delinquent debts.

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:
Subparagraphs 1.a - 1.b:

AGAINST APPLICANT
Against Applicant

Paragraph 2, Guideline E:
Subparagraph 2.a:

FOR APPLICANT
For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge