



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



In the matter of:)	
)	
)	ISCR Case No. 22-01502
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
 For Applicant: *Pro se*
 03/03/2023

Decision

BENSON, Pamela C., Administrative Judge:

Although Applicant’s delinquencies arose several years ago from his 2013 divorce, they have persisted without any evidence of debt-resolution efforts by him. An individual entrusted to safeguard sensitive and classified information is expected to act in a financially responsible manner. Applicant expressed an intent to disregard all of his delinquent creditors. He failed to mitigate the Guideline F security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 23, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The CAF took action 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 implemented by the DOD on June 8, 2017.

On September 6, 2022, Applicant responded to the SOR. He admitted all 11 alleged delinquent accounts, without any documentation provided in support of mitigation

or extenuation. He requested a determination on the written record, in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On September 27, 2022, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Items 1 through 6. Item 3 is the summary of an interview with an investigator from the Office of Personnel Management (OPM) conducted in March 2022. The FORM includes a notice to Applicant informing him of his opportunity to make any corrections, additions, deletions, and updates to the interview summary or to object to the admissibility of Item 3. The notice further informs Applicant that if he does not raise an objection or respond to the FORM, a DOHA administrative judge may determine that he has waived any objections to the admissibility of the summaries.

On October 19, 2022, Applicant received the FORM and its attachments. He timely submitted a response to the FORM, which I labeled as Applicant's Exhibit (AE) A and B. All exhibits submitted by the Government and Applicant were admitted into evidence, without objection. The case was assigned to me on January 23, 2023.

Findings of Fact

Applicant is 61 years old. In 1982, he earned a bachelor's degree in electronic engineering technology. He also graduated with an associate degree in business administration in 1992, and with two master's degrees in project management and business administration in 2005. He married in 1992 and divorced in 2013. He married his second wife in 2013. He has an adult son and an adult disabled daughter from his first marriage. He has a 13-year-old daughter with his current wife. Since July 2007, he has been employed as an engineer for a DOD contractor. (Items 2 and 6; AE B)

The SOR alleges 11 delinquent accounts totaling \$35,818. In his Answer, Applicant admitted all 11 delinquent accounts and listed that the financial issues were due to circumstances "largely beyond [his] control." He had court-ordered garnishments issued against him due to divorce court orders. His divorce was 20 months long, and he had to pay legal fees, ordered to provide alimony and child support, and he had a perpetual wage garnishment issued against him due to his special needs adult daughter. Since he remarried, he has been supporting two families. He also pays for private school, private music lessons, tutoring expenses, orthodontics, and a summer school program for his teenage daughter. His admissions and the credit reports in evidence support the SOR financial allegations. (Items 1, 5 and 6, AE A and B)

During his March 31, 2022 security interview, Applicant discussed his delinquent financial accounts that were listed in the SOR. He explained that his accounts became delinquent because of the divorce and writs of garnishments. He told the investigator that if he receives a collection notice from a creditor, he shreds the document without opening it. He does not see any value in reviewing the collection notice. He has decided the creditors should choose to either issue him a 1099-C, or obtain a writ of garnishment

through the legal process. He has made no contact with any of his delinquent creditors. He has no intention of voluntarily paying any of his delinquent accounts. (Item 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 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. . . .

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

- (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.

The SOR debts are established by the credit reports and admissions in the record. AG ¶¶ 19(a), 19(b), and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (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; and

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

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Although Applicant’s delinquencies arose several years ago from his 2013 divorce, they have persisted without any evidence of debt-resolution efforts by him. The August 2022 credit report in the record shows that his debts have not been reduced. An individual entrusted to safeguard sensitive and classified information is expected to act in a financially responsible manner. During his March 2022 security interview, Applicant acknowledged his financial delinquencies and expressed his intent to take no action to resolve his delinquent debts. He has not communicated with his creditors or made payment arrangements to resolve these delinquent debts. He did not provide any evidence of his current financial circumstances with the submission of a monthly budget or a personal financial statement.

Absent evidence of any debt-resolution efforts or other evidence demonstrating his financial responsibility, Applicant has not established he possesses the requisite good judgment, reliability, and trustworthiness the Government expects when an individual has been granted access to classified information. None of the mitigating conditions apply. Applicant did not mitigate the security concerns arising from his ongoing financial delinquencies.

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 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 the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant experienced financial issues attributed to, what appears to be, a contentious divorce. He has decided to ignore his delinquent creditors and he does not intend to take any responsible action to address his delinquent debts. Given the entirety of the record evidence, I conclude that 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.k:	Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge