



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



In the matter of:)
)
) ISCR Case No. 22-00694
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C.M. White, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant 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). 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 elected to have his case decided on the written record in lieu of a hearing in his September 2022 response to the SOR (Answer). The Government's written case was submitted on October 31, 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 November 30, 2022. He did not submit a response. The case was assigned to me on February 27, 2023. The Government's documents, identified as Items 1 through 11 in its FORM, are admitted in evidence without objection.

Findings of Fact

Applicant admitted SOR ¶¶ 1.f, 1.g, 1.j, 1.k, 1.l, 1.m, and he denied SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.h, 1.i, and 1.n in his Answer. He is 40 years old. He married in 2016 and divorced in 2018. He has one child. He earned his high school diploma in 2000. He served in the National Guard from 2002 to 2011, when he was honorably discharged. He attended college from 2015 to 2016 but did not earn a degree. He has worked for various DOD contractors since 2002, except when he worked part time for a university from 2005 to 2006. He was also unemployed from August 2007 to November 2007, and from July 2018 to October 2018. As of his December 2020 background interview, he had worked as a desk manager for his employer, a DOD contractor, since May 2020. He was first granted a security clearance in 2006. (Items 1-6)

The SOR alleges under Guideline F that Applicant had four delinquent student loans totaling \$11,082 (SOR ¶¶ 1.a-1.d); seven delinquent consumer debts totaling \$6,518 (SOR ¶¶ 1.e-1.k); \$251 in child support arrears (SOR ¶ 1.l); and two judgments, from 2011 and 2016, for \$12,019 and \$5,721, respectively (SOR ¶¶ 1.m-1.n). The allegations are established by his admissions in his Answer, a March 2018 security clearance application (SCA), a December 2020 background interview, his responses to interrogatories from August 2021 and April 2022, court records, and three credit bureau reports from October 2020 to February 2022. (Items 1-7, 9-11)

Applicant attributed his delinquent debts primarily to his youth. He also incurred his debts while attending school, during his periods of unemployment, or when he earned minimal income. He also cited his divorce as a contributing factor. He earned a minimal income when he was ordered in 2009 to pay \$1,006 monthly in child support, and he could not always fulfill this obligation. His tax refunds have been intercepted yearly and applied to his child support arrears, and he intended to address his delinquent debts after he resolved his arrears. (Items 2-5)

A May 2022 payment summary reflects that Applicant has been paying his child support obligation in SOR ¶ 1.l since at least July 2021. He stated that he paid SOR ¶¶ 1.a through 1.d, 1.j, and 1.n, and that he was paying SOR ¶¶ 1.g and 1.k, but he did not provide documentation to corroborate his claims. He did not provide any information about the status of SOR ¶¶ 1.e, 1.f, or 1.i. He stated that SOR ¶¶ 1.h and 1.m are older than seven years, and although he made attempts to address these debts, he did not feel obligated to continue to do so as he expected them to be removed from his credit bureau reports given their age. (Items 2-5)

Applicant's August 2021 personal financial statement reflects a net monthly income of \$3,076, and a net monthly remainder of \$537 after expenses. It does not reflect payments to any of the SOR debts, except for his child support obligation in SOR ¶ 1.l. The most recent credit bureau report from October 2022 does not reflect any delinquent debts. There is no evidence that he received any credit counseling. (Items 4-5, 8)

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), "inability to satisfy debts" and ¶ 19(c), "a history of not meeting financial obligations." Applicant has a history of not paying his debts. I find that AG ¶¶ 19(a) and 19(d) apply.

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;

(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.

Conditions beyond Applicant's control contributed to his delinquent debts. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under the circumstances. He has made payments to his child support obligation in SOR ¶ 1.1 since at least July 2021, before the SOR. I therefore find that allegation in his favor.

Although Applicant indicated that he paid SOR ¶¶ 1.a through 1.d, 1.j, and 1.n, and that he was paying SOR ¶¶ 1.g and 1.k, he did not provide documentation to corroborate his claims. He did not provide any information about the status of SOR ¶¶ 1.e, 1.f, or 1.i. Moreover, he stated that he did not feel obligated to resolve the older debts in SOR ¶¶ 1.h and 1.m, and he intended to wait for these debts to fall off his credit bureau report. It is reasonable for an administrative judge to expect an applicant to present documentary evidence showing resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). That some debts have dropped off an applicant's credit report is not meaningful evidence of debt resolution. ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016). He has not received financial counseling. I find that Applicant's delinquent debts continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are 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 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 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
Subparagraph 1.a - 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m - 1.n:	Against 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