



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



In the matter of:)
)
) ISCR Case No. 22-01009
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on October 5, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on November 1, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 2, 2022. As of January 9, 2023, he had not responded. The case was assigned to me on January 26, 2023. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. He has worked for his current employer since August 2021. He attended college for a period, but he did not earn a degree. He is married with two children. (Items 2, 3)

Applicant had periods of unemployment and underemployment while raising two young children. He was unable to pay all of his bills, and several debts became delinquent. (Items 1-6)

The SOR alleges five delinquent debts with balances totaling about \$46,700. The debts include a charged-off credit card (\$27,543), two defaulted student loans (\$1,749 and \$1,144), a debt to a collection company on behalf of a bank (\$1,046), and a charged-off auto loan (\$15,266). The balance on the auto loan appears to reflect the deficiency owed on the loan after the vehicle was repossessed. The debts are established through Applicant's admissions and credit reports. (Items 1-6)

The two largest debts are to the same credit union. The \$27,543 charged-off credit card was opened in 2018 and became delinquent in 2019 (SOR ¶ 1.a). Applicant financed an auto loan of about \$35,000 in 2018. The October 2021 credit report lists that loan as current with a balance of \$31,432. It was voluntarily surrendered shortly before or after October 2021, resulting in the deficiency balance of \$15,266 (SOR ¶ 1.e). He financed another vehicle in September 2021, with a loan of about \$35,000. He is current on this loan, and it was not alleged in the SOR. (Items 1-6)

Applicant stated that he was a scholarship athlete in college, and he signed some loan documents without realizing what they were. He did not recall signing for the two defaulted student loans (SOR ¶¶ 1.b and 1.c), but he acknowledged they were his responsibility. He thought the \$1,046 debt (SOR ¶ 1.d) to a collection company was for a medical debt, but the original creditor was actually a bank. (Items 1, 3-6)

Before the SOR was issued, Applicant paid, settled, or brought current several debts that were not alleged in the SOR. There is no evidence of any payments toward the SOR debts. He stated that he intended to pay his debts. He and his wife are doing much better career wise, and they are more mature. His parents both served more than 20 years in the U.S. military, and Applicant asserted that he would never do anything to betray his country. (Items 1, 3-6)

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 a history of financial problems, including multiple delinquent debts. AG ¶¶ 19(a), and 19(c) are applicable.

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;
- (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.

Applicant attributed his financial problems to periods of unemployment and underemployment and raising two young children. His employment issues were largely beyond his control. AG ¶ 20(b) also requires that “the individual acted responsibly under the circumstances.”

Applicant paid, settled, or brought current several non-SOR debts before the SOR was issued, which is a step in the right direction. There is no evidence of any payments toward the SOR debts. He stated that he intends to pay his debts. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant may reach a point where his finances warrant a security clearance, but he has not established that he is there yet. 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.” There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is partially applicable, but none of the other mitigating conditions are applicable. Financial considerations security concerns are not mitigated.

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 in my whole-person analysis.

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.e:	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.

Edward W. Loughran
Administrative Judge