



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



In the matter of:)	
)	
)	ISCR Case No. 21-01830
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2023

Decision

Curry, Marc E., Administrative Judge:

Although Applicant has satisfied or resolved many of his delinquent debts, it remains unclear whether there is enough evidence of reform to mitigate the financial considerations security concern, given his remaining delinquent state and federal income taxes, and his lavish expenditures over the past three years. Clearance is denied.

Statement of the Case

On August 31, 2021, Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. Applicant answered the SOR on September 21, 2021, admitting the allegations and requested a hearing, whereupon the case was assigned to me on September 29, 2022.

That day, DOHA issued a notice of video teleconference hearing, scheduling the hearing on October 25, 2022. The hearing was held as scheduled. At the hearing, I considered Applicant's testimony, together with six Government Exhibits (GE), marked and incorporated into the record as GE 1 through GE 6, and nine Applicant exhibits (AE), marked and incorporated into the record as AE A through AE I. At Applicant's request, I extended the record through November 9, 2022, to afford him the opportunity to submit additional exhibits. Within the time allotted, he submitted three additional exhibits, marked and incorporated into the record as AE J through AE L. The transcript (Tr.) was received on November 3, 2022.

Preliminary Ruling

At the close of the hearing, I granted a motion filed by Department Counsel to amend the SOR, adding the following subparagraph:

1.k. Applicant owes \$3,000 for tax year 2020 to the federal government. (Tr. 86)

This amended allegation conforms to Applicant's testimony. (Tr. 85; Directive ¶ E3.17)

Findings of Fact

Applicant is a 45-year-old married man with two children, ages 11 and 15. He is a veteran of the U.S. Army, serving from 1996 to 2002, when he was honorably discharged. He has held a security clearance since 2006. (Tr. 14) He has been working for a defense contractor as a database administrator since 2019. (Tr. 14, 32)

Per the SOR and the Amended SOR, Applicant incurred approximately \$50,000 of delinquent debt. The debt alleged in subparagraph 1.a, as duplicated in subparagraph 1.h, totals approximately \$10,000. (Answer at 1) It is a deficiency remaining from a car that Applicant purchased in the early 2010s. (Tr. 60) Applicant voluntarily surrendered the car in approximately 2016 after he could no longer make the car payments after a death in the family compelled him to provide financial support to some extended family members. (Tr. 21) Within a year of surrendering the car, in 2017, Applicant traveled to another country for a six-to-ten day vacation. (GE 1 at 17) In approximately 2021, Applicant began reaching out to the creditor to ascertain the status of the debt. (Tr. 60) In October 2022, he received a letter from the current creditor informing him that the file was closed on this debt, and that they had terminated collection action. (AE K) Applicant previously owned another car that was repossessed in 2006 for failure to pay the loan. (Tr. 68)

The debt alleged in subparagraph 1.b, totaling \$4,204, stems for a furniture loan. Applicant resolved it in October 2022. (AE H)

The debt alleged in subparagraph 1.c, totaling \$1,917, is a delinquent loan. Applicant opened it in 2015 and was originally scheduled to have satisfied it by January

2017. (AE G) Although he did not satisfy it by the agreed-upon date, he was current on the amount due as of October 2022. (AE G)

The debt alleged in subparagraph 1.d, totaling \$1,364, was owed to an insurance company. On October 19, 2022, Applicant confirmed his contention that this debt was paid. (AE F)

Subparagraph 1.e, totaling \$1,090 is a loan Applicant opened to finance a vacation. As of January 2022, this account was paid in full.

The debts alleged in subparagraphs 1.f and 1.g are timeshare maintenance fees. Applicant admits that he purchased a timeshare for a one-bedroom property, but explained that when he canceled the one-bedroom property agreement and upgraded it to a two-bedroom property, the company never cancelled the maintenance fees for the original purchase, and instead, billed him maintenance fees for both the one-bedroom property and the two-bedroom property. (Tr. 29-31) Applicant brought this discrepancy to the attention of the timeshare company, and it confirmed that he no longer owes money for either property. (AE J)

Subparagraph 1.i is a medical bill, totaling \$2,154 stemming from emergency medical treatment Applicant received in the spring of 2019. (Tr. 27) Applicant receives medical benefits from the Department of Veterans Affairs (the VA) for a service-connected disability. (Tr. 27; GE B) Per the agreement, the VA should have covered the bill, but they did not receive it from the hospital. (Tr. 27; GE B) Neither Applicant, nor the VA has been able to contact the current collection agent for the bill. (Tr. 28) Applicant disputed the bill with a credit reporting agency and it was removed from his credit report. (Tr. 74)

Applicant owes delinquent state income tax for tax years 2010 and 2011, as alleged in subparagraph 1.j. As of January 2020, the delinquency totaled \$8,243. (GE 5 at 1) That month, Applicant entered a payment agreement whereupon he was to pay \$244 per month over the next 36 months to satisfy the account. (GE 5) Applicant has not made payments consistently. (Tr. 77) He attributed his failure to make consistent payments to "little small issues [that] kind of arose and [that] kind of made [him] broke for the payment plan." (Tr. 78) The month Applicant entered the payment plan, he spent \$2,000 on an overseas vacation. In January 2021, he spent \$2,000 on another overseas vacation, and in August 2021, he spent \$2,000 on an island vacation for his tenth wedding anniversary. (GE 1 at 42) In August 2022, Applicant financed the purchase of a luxury vehicle through an \$82,000 loan. (Tr. 48)

Applicant is indebted to the federal government for tax year 2020 in the amount of \$3,000, as alleged in subparagraph 1.k. (Tr. 85) As of the hearing date, he had not developed a payment plan. (Tr. 85)

Applicant earns \$150,000 annually. (Tr. 33) Applicant's wife has been working for the past two years at a job earning \$30,000. (Tr. 37) Before then, she was unemployed for approximately two years. (Tr. 88) Typically, Applicant's wife handled utility bills and the

insurance bills. (Tr. 88) When she was unemployed, Applicant had to handle these bills. (Tr. 88) Applicant has “a couple hundred” dollars in a checking account and he has approximately \$1,500 in a savings account. (Tr. 89) One week before the hearing, on October 18, 2022, Applicant enrolled in financial counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility 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, 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18) Applicant’s history of financial problems and his delinquent federal and state income tax debts trigger the application of AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting’s financial obligations,” and AG ¶ 19f), “. . . failure to pay annual Federal, state, or local income tax as required.”

The following mitigating conditions under AG ¶ 20 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has satisfied the debts alleged in subparagraphs 1.b, 1.d, and 1.e and he is current on the debt alleged in subparagraph 1.c. I resolve these allegations in his favor.

Applicant successfully disputed the timeshare debts, alleged in subparagraphs 1.f and 1.g, and the medical debt, alleged in subparagraph 1.i. Under these circumstances, AG ¶ 20(e) applies.

I remain concerned about the other SOR allegations. Specifically, Applicant chose to eschew his payment agreement with his state tax authority to pay his delinquent 2010 and 2011 taxes, in favor of purchasing luxury items, including multiple vacations and the recent purchase of an \$82,000 personal vehicle. Furthermore, his decision to enroll in financial counseling a week before the hearing does not mitigate the underlying security concern. Ultimately, Applicant's satisfaction of many of the debts, and his investigation into the status of some of his other debts trigger the application of AG ¶ 20(d) for those debts, but is insufficient to carry the burden, when considered in tandem with the circumstances surrounding how Applicant incurred the debts and how long the state tax debts have been delinquent. I conclude he has failed to mitigate the financial considerations security concern,

Whole-Person Concept

I considered the whole-person concept in my analysis of the disqualifying and mitigating conditions and it does not warrant a favorable conclusion.

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:	Against Applicant
Subparagraphs 1.b – 1.i:	For Applicant
Subparagraphs 1.j – 1.k:	Against Applicant

Conclusion

Considering 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.

Marc E. Curry
Administrative Judge