



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



In the matter of:)
)
) ISCR Case No. 20-02900
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

05/02/2023

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July 9, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted 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 (AG) effective on June 8, 2017.

On August 10, 2021, Applicant answered the SOR, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 8, 2022, and the hearing was scheduled for December 6, 2022, using video teleconferencing capabilities. Before the hearing date, a question arose

as to whether there was jurisdiction to hear this case (whether Applicant was currently sponsored by a contractor for a clearance). That issue was resolved in Applicant's favor, but the hearing date was rescheduled. On December 13, 2022, a second notice of hearing was issued resetting the hearing for December 20, 2022. The hearing was held as rescheduled. The Government offered exhibits (GE) 1 through 5 and were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter to Applicant was marked as a HE II. Applicant testified and offered exhibits (AE) A-D at the hearing, which were admitted without objection. The record remained open after the hearing, and Applicant timely submitted exhibits AE E-F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 3, 2023.

Procedural Issue

Department Counsel moved to amend SOR ¶¶ 1.a and 1.b to conform to the expected proof in the case related to the amount of debt alleged. SOR ¶ 1.a should state the amount of \$3,498 and SOR ¶ 1.b should state the amount of \$24,057. Applicant posed no objection, and the motion was granted. (Tr. 13-15)

Findings of Fact

In his SOR answer, Applicant admitted some of the allegations and denied others. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 33-year-old former employee of a federal contractor performing the duties of an aircraft servicer. While he is no longer employed by this defense contractor, he has potential employment with a sponsoring contractor contingent upon the successful resolution of his security clearance. He worked at his previous position from May 2019 until December 2022. He served in the U.S. Navy from 2008-2013. He has honorably discharged. While serving in the Navy he deployed to Africa. He receives disability income from the Department of Veterans Affairs (VA) (ten percent rating). He has taken some college courses. He is single, never married, and he has no children. (Tr. 5-6, 26, 29-30, 32, 47; GE 1)

The SOR alleged eight delinquent accounts (repossessed cars, consumer debts, a payday loan, and debts owed to the VA) totaling approximately \$41,927. (SOR ¶¶ 1.a – 1.h) The debts are established by credit reports from August 2019, April 2021, and February 2022; Applicant's personal subject interview (PSI) with an investigator in September 2019; and his SOR admissions. (GE 2-5; Answer to SOR)

Applicant attributed his financial problems in his words to being "young and dumb." He was not financially sophisticated when he joined the Navy and used credit unwisely. As an example, he took out an automobile loan for an ex-girlfriend that he could not afford. He later voluntarily surrendered the car to the creditor after nonpayment. Additionally, after he left the Navy, he experienced periods of unemployment and underemployment until approximately 2019 when he was employed by his most recent employer. He hired

a debt resolution firm to dispute debts that were over seven years old. Other than that, he has not had any financial counseling. (Tr. 26-28, 30, 43-45, 48-52)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$3,498. This is a credit-card debt to a credit union. The debt was assigned for collection in October 2012. Applicant provided documentation showing that he entered an agreement to pay the debt in March 2022, but he admitted he failed to make any payments under the agreement. This debt is unresolved. (Tr. 30-31, 38-39; GE 4-5; AE F)

SOR ¶ 1.b-\$24,057. This is an automobile loan for a repossessed car. The debt was assigned for collection in November 2012. Applicant provided documentation showing that he entered an agreement to pay the debt in March 2022, but he admitted he failed to make any payments under the agreement. This debt is unresolved. (Tr. 30-31, 38-39; GE 4-5; AE F)

SOR ¶ 1.c-\$676. This is a delinquent payday loan. Applicant documented paying this debt on April 21, 2022, after the SOR was issued. This debt is resolved. (Tr. 40; GE 5; AE C)

SOR ¶ 1.d-\$708. This is a delinquent debt for a rental car. Applicant documented settling this debt on April 21, 2022, after the SOR was issued. This debt is resolved. (Tr. 40-41; GE 5; AE A)

SOR ¶¶ 1.e-1.f-\$1,062; \$1,061. Applicant incurred these two debts to the VA when he used his GI Bill educational benefits to take some college classes. He failed to complete the classes and was required to reimburse the VA. He asserted that his federal tax refunds were captured to pay the debt. He provided copies of his 2017-2020 federal tax transcripts showing that amounts were captured to pay non-IRS debts. It is reasonable to conclude that these amounts were captured to pay his outstanding debts to the VA. These debts are resolved. (Tr. 42-43; AE E)

SOR ¶ 1.g-\$1,109. This is a delinquent consumer debt. Applicant documented paying this debt on November 7, 2022, after the SOR was issued. This debt is resolved. (Tr. 43; GE 5; AE D)

SOR ¶ 1.h-\$9,754. This is an automobile loan for a repossessed car. Applicant secured this loan on behalf of his then-girlfriend. Payments were not made, and the debt was assigned for collection in December 2016. Applicant admitted making no efforts to resolve this debt. This debt is unresolved. (Tr. 45; GE 5)

In addition to the SOR debts, Applicant documented paying a non-SOR debt to a utility company. (AE B)

Applicant testified that his income at his last job was approximately \$2,000 every two weeks. He is currently unemployed, except for working some part-time jobs. He did not provide any other budgetary information. (Tr. 47)

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 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, 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 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 for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial difficulties dating back to 2012. He incurred eight delinquent debts totaling approximately \$42,000. The three largest debts remain unpaid. Applicant's admissions and credit reports establish the debts. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's debts are recent because they are ongoing and, although he paid five of the debts, he failed to address the remaining debts, which comprise the greatest portion of the overall debt amount. Additionally, the debts were not paid until after the issuance of Applicant's SOR in July 2021. AG ¶ 20(a) is not applicable.

Although Applicant's unemployment and underemployment after he was discharged from the Navy were circumstances beyond his control, he also admitted using credit unwisely early in his Navy career. He did not act responsibly concerning the debts when he failed to resolve them in a timely fashion. While he contacted the credit union to arrange payment plans for two large debts, he failed to follow-up that action by making any payments. AG ¶ 20(b) is not applicable.

Applicant presented some evidence of financial counseling, which was the hiring of a company to clean up his credit. However, his track record to date does not support a good financial picture. He has had financial difficulties for a number of years. Based upon his past history, there is no reason to believe that he will right his financial ship in the future. While he did resolve five debts, these actions are too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶¶ 1.c-1.g.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, including his deployment, his contractor service, and his periods of unemployment and underemployment. However, I also considered that he has not adequately addressed his delinquent debt. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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.b, 1.h:	Against Applicant
Subparagraphs: 1.c-1.g::	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge