



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



In the matter of:)	
)	
)	ISCR Case No. 22-00388
)	
Applicant for Security Clearance)	

Appearances

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

01/19/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 2, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 20, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on August 31, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6 (Item 1 is the SOR). Applicant provided a response to the FORM, but did not object to the Government's evidence. His response was marked as Applicant Exhibit (AE) A. There were no objections and all evidence was admitted. The case was assigned to me on October 20, 2022.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.j and 1.l through 1.o. He denied SOR ¶ 1.k. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He served in the military from 1983 to 2003 and was honorably retired. He earned a bachelor's degree in 2012 and a master's degree in 2014. He was married from 1987 to 2011 and has four adult children between the ages of 34 and 27. He has worked for his present employer, a federal contractor, since July 2004.

The SOR alleges that Applicant owes \$37,604 in delinquent student loans (¶¶ 1.a through 1.j) and three miscellaneous debts that total \$241 (SOR ¶¶ 1.k through 1.m) He admits he owes all of these debts, except SOR ¶ 1.k (\$127). This debt is reported on Applicant's October 2021 credit report. It is not reported on his March 2022 credit report. In addition, Applicant admits that he failed to timely file his 2019 and 2020 federal and state income tax returns. (Item 2)

Applicant completed a security clearance application (SCA) in August 2021. In it, he disclosed that he failed to file his 2019 federal income tax return. He stated it was because he was unable to obtain an income tax statement from the military through its computer system for his retirement pay so he could file accurately. He attempted to contact the appropriate agency, but was unable to talk with a person or reset his password. He requested a password be sent by mail, but had not received one. He also disclosed his student loans were delinquent and he was working to resolve them. He said that he had "withholdings from paycheck that have been suspended right now because of COVID." He indicated that the payments were made through garnishment. (Item 3)

Applicant was interviewed by a government investigator in November 2021. He confirmed to the investigator that he had not filed his 2019 or 2020 federal and state income tax returns because he could not access the online system to retrieve the information he needed about his military pension. He said he continued to attempt to use the telephone and online system unsuccessfully. He told the investigator he would continue to attempt to obtain the information he needed but did not know when it would be successful. He believed he owed about \$500 in federal income taxes for each tax year. (Item 4)

Applicant told the government investigator that in 2011 after his divorce, he went from a dual income household to a single income. He said he was solely responsible for

raising the children and maintaining a household. He lives paycheck to paycheck and receives a military pension. He intended to satisfy all of his debts. (Item 4)

In April 2022, Applicant completed government interrogatories. In them, he disclosed his 2019 and 2020 federal and state income tax returns were not filed. He reiterated that he was unable to file them because he was unable to obtain his income tax statement from the military and the telephone number he was given was to a general switchboard, so he could not make an in-person appointment. He did not know if he owed taxes for these tax years. He did not have an installment agreement with the IRS. (Item 4)

In Applicant's answer to the SOR, he admitted the allegations that his student loans were delinquent. Some of his loans are through the Department of Education (DOE) (SOR ¶¶ 1.a through 1.e) and others are with a private creditor (¶¶ 1.f through 1.j). On his March 2022 credit report, the DOE and the private creditor loans are reflected as being in a collection status. His DOE loans show his last payments were in January 2018. The others reflect they have been delinquent since 2016. (Items 2, 4, 5, 6)

Applicant told the investigator that in 2014, he was paying \$500 a month on his student loans and in 2015 the creditor wanted \$1,000, which he could not afford, but he continued to pay \$500. In his personal financial statement, provided with his interrogatories, he lists a monthly payment of \$500 for his student loans. Applicant has not provided any documentary proof as to the current status of the alleged student loans, past payments, or a payment agreement. Due to the pandemic, there is a moratorium on student loan payments. (Item 4)

In Applicant's response to the FORM, he did not provide any updated information about recent efforts to resolve his tax issues, status of student loans, or resolution of his other delinquent debts. He explained he is doing his best to overcome his financial problems and does not believe it should have an impact on his eligibility to hold a security clearance. He has not had any security violations in the past. He said he would never knowingly disclose national security sensitive information. He does not live extravagantly and believes his years of military and government service should be considered. (AE A)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 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

The security concern relating to the guideline 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. 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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required.

Applicant has delinquent student loans and other unpaid small consumer debts. He failed to timely file his 2019 and 2020 federal and state income tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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 approximately \$37,604 of delinquent student loans that are in collection status. He also has some smaller debts that he did not provide any information on his actions to resolve. These debts are ongoing and unpaid. Applicant failed to timely file his 2019 and 2020 federal and state income tax returns. He has not provided evidence of actions he has taken to file his delinquent tax returns. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his 2011 divorce and being responsible for raising the children. This was a condition beyond his control. He attributed his failure to file his tax returns to being unable to obtain his income tax statements for his military pension. This was a condition beyond his control for a period. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant failed to provide evidence of his actions to resolve his delinquent student loans or delinquent debts. It appears his wages were garnished to pay some of his student loans. Applicant may have initially been unable to obtain income tax documents for his military pension due to computer issues that were beyond his control. However, his failure to actively pursue a resolution of this problem and allow it to continue into another tax year does not constitute acting responsibly. He offered scant information about what he is doing to resolve it. AG ¶ 20(b) has minimal application.

There is some evidence that payments were being made on Applicant's student loans, but they were through garnishment. This is not a good-faith effort to repay his creditors. AG ¶ 20(d) does not apply. He has not offered any evidence as to his current efforts to resolve or create a payment plan to address his student loans or other debts. There is no evidence he has received financial counseling. AG ¶ 20(c) does not apply. Applicant denied the debt in SOR ¶ 1.k. It is not on his March 2022 credit report. I find for him on this allegation. AG ¶ 20(e) applies to SOR ¶1.k.

Applicant did not offer evidence of arrangements he made with the IRS or his state tax authority to file his delinquent tax returns. AG ¶ 20(g) does not apply.

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 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.

I have considered Applicant's military and government service. He failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.o:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge