



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



In the matter of:)	
)	
)	ISCR Case No: 22-01495
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esquire, Department Counsel
 For Applicant: *Pro se*
 04/17/2023

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the guideline for financial considerations. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On September 19, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). (Item 1) Applicant responded to the SOR on October 17, 2022, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.)

On January 23, 2023, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant, and received by him on February 8, 2023. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant responded to the FORM and submitted documents that I marked as Applicant Exhibit (AE) A. There

were no objections to any exhibits, and all were admitted in evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on March 17, 2023.

Findings of Fact

Applicant admitted the eight SOR allegations contained in SOR Paragraph 1, with explanations. (Item 2) His admissions are incorporated into these findings of fact.

Applicant is 41 years old. He is married and has three children. He earned a master's degree in 2009. He has worked for federal contractors since approximately 2010 and obtained a security clearance in 2010. He started a position with his current employer, a federal contractor, in January 2022. (Item 3)

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 19, 2022. In response to questions in Section 26 (Financial Records), Applicant disclosed delinquent credit cards and a personal loan that became delinquent in 2019. He explained that he used the credit cards and personal loan to finance a business venture that later failed. (Item 3.)

On March 8, 2022, Applicant was interviewed by an investigator for the Office of Personnel Management (OPM). During the interview, he discussed nine delinquent accounts. He explained that in 2017 he started a cryptocurrency (digital money) business. As he did not have enough money to fund the start-up business, he used credit cards and a personal loan to finance it. Initially, his business was successful; however, about a year later, in 2018, his cryptocurrency lost most of its value and his business became insolvent. He was then in debt about \$45,000. (Item 7)

Based on credit bureau reports (CBR) from February and August 2022, the SOR alleged eight debts totaling about \$57,157, which became delinquent between 2017 and 2020. (Items 4, 5) The status of those debts is as follows:

1. In 2022, the creditor in SOR ¶ 1.a. filed a lawsuit against Applicant for \$22,443. On November 23, 2022, Applicant entered into an agreement to settle the debt for \$11,000. He made an \$8,000 payment to the creditor before December 22, 2022, and agreed to make 12 monthly payments of \$250 thereafter. He stated the balance was \$2,500 as of February 2023. (AE A) It is being resolved.

2. The \$7,857 charged-off credit card account alleged in SOR ¶ 1.b is unresolved.

3. The \$6,021 charged-off credit card account alleged in SOR ¶ 1.c is unresolved. Applicant said he is addressing this debt now because he resolved the lawsuit. (AE A)

4. The \$5,529 charged-off credit card account alleged in SOR ¶ 1.d is unresolved.

5. The \$5,676 debt alleged in SOR ¶ 1.e is a judgment that was filed against Applicant in 2022 for a delinquent charge card. He settled the debt for \$5,140 and paid it in April 2022. (AE A) It is resolved.

6. The \$4,859 charged-off credit card account alleged in SOR ¶ 1.f is unresolved. (Item 2)

7. The \$3,107 charged-off retail account alleged in SOR ¶ 1.g is unresolved. (Item 2)

8. The \$1,665 charged-off retail account alleged in SOR ¶ 1.h is unresolved. (Item 2)

To date, Applicant has resolved \$5,676 of the alleged debt, and he is resolving \$22,443 of debt. Approximately, \$29,000 of alleged debt remains unresolved.

Applicant told the government investigator during his March 2022 interview that his current income was \$95,000 a year, and his wife earned about \$25,000 a year. He said after he pays his expenses, he has \$800 to \$1,000 remaining each month, which he was saving to resolve his debts. He said his employer and security officer are aware of his financial problems. (Item 7)

According to Applicant's January 2023 CBR, he has 13 student loans, which he opened between 2005 and 2008. As of January 2023, the balance owed is around \$104,000. He pays about \$270 a month on that balance. The loans are reported as 'current' or 'pays as agreed'.¹ (Items 4, 6)

Policies

The national security eligibility action was taken under Executive Order 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 Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations

¹In March 2020, as a result of the COVID-19 pandemic, the Department of Education (DoEd) placed all federal student loans in forbearance and has since extended the student loan payment pause through June 30, 2023. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collection on defaulted loans. (See Federal Student Aid: <https://studentaid.gov/announcements-events/covid-19>.)

for each guideline, the AG 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of several 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

The guideline lists conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated \$57,157 of SOR-alleged delinquent debts between 2017 and 2020, most of which he has been unable to fully resolve. The above disqualifying conditions apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. Four are potentially applicable in this case:

- (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 SOR-alleged debts started becoming delinquent in 2018 when his start-up business venture in cryptocurrency began to fail. His debts were substantial, continue into the present, and cast ongoing doubt on his judgment. The evidence establishes minimal mitigation under AG ¶ 20(a).

While the financial market downturn affecting cryptocurrency may have been a circumstance beyond Applicant's control, his reliance on credit cards and personal loans to finance his speculative venture was within his control. He did not present evidence that he acted responsibly under the circumstances until sometime in April 2022, when he paid one debt after he spoke to the government investigator about his debts. AG ¶ 20(b) partially applies. Applicant has not participated in credit or budget counseling. In April 2022, he resolved and paid the \$5,676 debt alleged in SOR ¶ 1.e. In November 2022, he reached a settlement in a lawsuit and began resolving the \$22,443 debt alleged in SOR ¶ 1.a. He said he is trying to resolve the \$6,021 debt alleged in SOR ¶ 1.e. While there is some evidence indicating that Applicant's delinquent debts are slowly coming under control, that evidence is insufficient to establish significant mitigation under AG ¶ 20(c).

Applicant established minimal mitigation under AG ¶ 20(d) for the debts alleged in SOR ¶¶ 1.a and 1.e. He did not initiate a good-faith effort to resolve the \$22,443 debt until after the creditor sued him. He did not begin to address the \$5,676 until after he spoke to the investigator.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult who is accountable for his choices and actions. In 2017, he started a financially risky venture using borrowed funds that resulted in significant losses and delinquent debt within a year. While he asserts that he is reliable and trustworthy, his failure to begin demonstrating responsible management until after he submitted his January 2022 SCA makes this claim less persuasive. He knew he was acquiring delinquent debts when his business failed but waited almost four years to begin to address them. He did not submit a written budget with sufficient details about his income and monthly expenses for me to determine his financial solvency and ability to pay his ongoing debts. He has managed to stay current on \$100,000 of outstanding student loan debt through the government pause and minimal payments. However, this pending additional debt load, together with the remaining debts alleged in the SOR, create some uncertainty about his ability to achieve and maintain financial stability and reliability. The likelihood of continuation and recurrence of financial concerns, and the potential for pressure and duress, remain undiminished at present.

Applicant has not established a reliable track record of responsibly handling his financial obligations. Overall, the record evidence does not resolve the concerns about Applicant's eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.h:	Against Applicant

Conclusion

Considering all circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. National security eligibility for a security clearance is denied.

SHARI DAM
Administrative Judge