



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



In the matter of:)
)
) ISCR Case No. 22-00819
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2023

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 May 9, 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 May 11, 2022, and requested a hearing before an administrative judge. The case was assigned to me on January 25, 2023.

The hearing was convened as scheduled on February 14, 2023. Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted two emails and attached documents, which marked AE G through I and admitted without objection.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer since December 2019. He served on active duty in the U.S. military from 1999 until he was honorably discharged in 2006. He earned an associate degree in 2016. He also had technical certifications. He married in 2018. He has two young children and a stepchild. (Tr. at 25, 28-29, 45-46; Applicant's response to SOR; GE 1)

Applicant's car broke down several times in 2014. He paid about \$9,000 in repairs. In about 2015, he started working part-time in real estate, and he got into the business of "flipping" houses. The business was ultimately unsuccessful, and he had debts that he could not pay. He reported on his Questionnaire for National Security Positions in February 2020 that he traveled to a foreign country for tourism in 2018 for somewhere between 11 and 20 days. (Tr. at 20, 27-28, 39-43; GE 1)

The SOR alleges 11 delinquent debts totaling about \$32,245. The debts are listed on a November 2019 credit report, an April 2022 credit report, or both credit reports. Most of the debts were opened from 2015 through 2018, with the last payments received in 2017 through 2019. (GE 3, 4)

SOR ¶ 1.b alleges a \$180 debt to a credit union. The account was opened in April 2017, and it became delinquent in December 2017. Applicant paid it in full in May 2022. (Tr. at 21-22, 30; GE 3, 4; AE A)

SOR ¶ 1.c alleges a \$3,126 charged-off auto loan. The account was opened in August 2015, and it became delinquent in May 2017. The creditor agreed to accept \$2,345 through three payments of \$391 between July 2022 and November 2022 in settlement of the debt. Applicant paid the full settlement amount early, and the creditor released the lien on the vehicle. (Tr. at 22-23, 30; Applicant's response to SOR; GE 3, 4; AE B, C)

Applicant denied owing the \$90 debt to a bank, as alleged in SOR ¶ 1.d. The debt is reported on the 2019 and 2022 credit reports. He stated that he called the bank, but the customer service representative told him that they did not have the debt in their collections department. He stated that he would have paid the debt if he knew who held the debt. (Tr. at 30-32; Applicant's response to SOR; GE 3, 4)

Applicant denied owing the \$287 debt to a collection company on behalf of a cable services provider (SOR ¶ 1.j). The debt was reported by all three credit reporting agencies on the November 2019 combined credit report, with an activity date of September 2017. It is not listed on the April 2022 Equifax credit report. He stated in his response to the SOR that the debt was returned to the original company, and he planned to pay it on June 21, 2022. He testified that he called the collection company on June 14, 2022, but the company could not locate the debt. (Tr. at 36-37; Applicant's response to SOR; GE 3, 4; AE B, C)

The November 2019 credit report listed a \$364 charged-off debt to a credit union (SOR ¶ 1.k). Applicant provided documentation from the credit union indicating that the account was closed as of July 2019 in good standing with no remaining balances. (Tr. at 37; Applicant's response to SOR; GE 3, 4; AE H, I)

Applicant admitted owing the remaining SOR debts (SOR ¶¶ 1.a and 1.e-1.i). Those six debts total about \$28,000 and are all reported on both the November 2019 and April 2022 credit reports. He testified that he contacted several of the creditors about resolving the debts, and he planned to pay the debts. (Tr. at 24, 29-30, 32-36, 45; Applicant's response to SOR; GE 3, 4)

In a post-hearing email on March 13, 2023, Applicant indicated that he "was looking over [his] debts lately and noticed that [he had] only two left so far to pay off." Based on his later email of May 8, 2023, it appears that the two debts he was referring to were the debts alleged in SOR ¶¶ 1.a (\$3,315) and 1.h (\$11,119). He provided no evidence that he paid the other four debts. He provided a copy of a recent combined credit report that does not list any of the SOR debts, but the report is incomplete. The report apparently had 69 pages, but he only provided pages 32 to 66. (AE G, H)

Applicant submitted letters attesting to his excellent job performance and strong moral character. He is praised for his work ethic, positive attitude, and integrity. He is described as an "exemplary employee." (AE D, E)

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 and 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant attributed his financial problems to \$9,000 in auto repairs in 2014 and his failed attempt at flipping houses. Those events were beyond his control, but he also traveled to a foreign country for tourism in 2018 for between 11 and 20 days.

Applicant is credited with paying \$180 and \$2,345 to resolve the debts alleged in SOR ¶¶ 1.b and 1.c. The \$364 charged-off debt to a credit union (SOR ¶ 1.k) was resolved before July 2019. I accept his testimony that he would have paid the \$90 and \$287 debts alleged in SOR ¶¶ 1.d and 1.j, but the creditors could not locate the debts. Those five debts are mitigated.

The six remaining debts total about \$28,000 (SOR ¶¶ 1.a and 1.e-1.i) and are all reported on both the November 2019 and April 2022 credit reports. Applicant admitted in his SOR response and at the hearing that he owed those debts. Post-hearing, he

stated, without explanation or documentation, that he only had two debts left to pay off. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

I infer that Applicant meant that the four debts were no longer on his credit report. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Additionally, I cannot conclude with any degree of certainty that the debts are not on his credit report, because I only received a partial credit report. He stated that he plans to pay his debts. 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).

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. The above mitigating conditions, individually or collectively, are insufficient to eliminate concerns about Applicant’s finances.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant’s honorable military service and favorable character evidence.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraphs 1.e-1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For 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