



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



In the matter of:)
)
) ISCR Case No. 22-00838
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern raised by his problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on September 23, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on August 3, 2022, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on August 10, 2022 and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On November 16, 2022, Department Counsel

submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. DOHA sent the FORM to Applicant on November 21, 2022, who received the FORM on November 23, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on January 10, 2023 (Response). Department Counsel did not object to the Response. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in the case. Items 3 through 7 are admitted without objection. The case was assigned to me on February 15, 2023.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 33 years old and is a college graduate (June 2013). He has never married and has no children. Since August 2020, he has been employed by a defense contractor. (Item 3.) He reported the following periods of unemployment: January 2010 to July 2014; November 2018 to February 2019, and; March 2020 to August 2020. (Items 3 and 7.)

The August 3, 2022 SOR alleged three delinquent accounts, two federal student loans totaling \$60,090 and a delinquent auto loan for \$8,840. (Item 1.) Applicant denied those allegations. (Item 2.)

Applicant attached to his Answer an August 15, 2022 letter to him from the U.S. Department of Education confirming a defaulted student loan rehabilitation agreement, whereby he will pay \$708 per month beginning on October 2, 2022. His signed rehabilitation agreement was included with his Response. Failure to make those payments will result in the loans becoming delinquent. He did not submit documents showing any payments made under the rehabilitation agreement. (Item 2 and Response.) The student loans were assigned for collection in December 2013. ((Items 4 and 5.)

Applicant attached to his Answer an August 23, 2022 letter to him from his auto loan creditor confirming a settlement agreement, whereby he will pay 35 monthly payments of \$185 to resolve the debt for less than the full balance. In his Response, he submitted a cancelled check showing a December 11, 2022 payment of \$185 under this agreement. If all required payments are not made, the account will not be considered settled. (Item 2 and Response.) The auto loan was assigned for collection in January 2014. (Item 4.)

Applicant attributed his three delinquent debts to periods of unemployment. (Item 7.) He did not specify which period or periods of unemployment caused his financial difficulties. He is "currently financially stable" and "is capable of meeting obligations." There is "nobody that would question [his] ability to live within [his] means." (Item 7.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then 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 in seeking a favorable security decision.

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

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

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The SOR debts are established by Applicant's admissions in his Personal Subject Interview and the Government's credit reports. AG ¶¶ 19(a) through 19(c) apply.

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

I have considered mitigating condition AG ¶ 20(a). Applicant's SOR debts were assigned to collections about 10 years ago. That is admittedly quite some time ago. They have, however, remained in collections since that time, even though he claims to be "financially stable" and "capable of meeting [his] obligations." He apparently elected not to meet his SOR debt obligations over those 10 years. That casts doubt on his current reliability. His debts are not mitigated under AG ¶ 20(a).

I have considered mitigating condition AG ¶ 20(d). Since the SOR was issued on August 3, 2022, Applicant has been quite busy. By August 15, 2022, he had arranged to have his two delinquent student loans put into rehabilitation. And just over a week later, on August 23, 2022, he arranged an installment settlement agreement with his auto creditor and made one payment in December under that agreement.

It is difficult not to conclude that Applicant's sudden attention to his delinquent student loans and his delinquent auto loan was prompted by the issuance of the SOR. Timing like this is pertinent, as the Appeals Board has observed: "Applicants who begin to resolve their debts only after having been placed on notice that their clearances or trustworthiness . . . are in jeopardy may be disinclined to follow rules and regulations when their personal interests are not

at stake.” ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug. 17, 2018). His debts are not mitigated under AG ¶ 20(d).

The Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant did not mitigate the security concerns arising 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. – c.:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge