



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



In the matter of:)
)
) ISCR Case No. 22-02198
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2023

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 February 13, 2023, 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 February 15, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 16, 2023. The hearing was convened as scheduled on May 31, 2023.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1, 2, and 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

SOR Amendment

On my own motion and without objection, I amended the SOR by changing the amount alleged in SOR ¶ 1.o from \$18,000 to \$15,161. (Transcript (Tr.) at 27-29)

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since May 2022. He is applying for a security clearance for the first time. He earned a bachelor's degree in 2017, and he attended post-graduate classes in 2017. He married in 2019. He and his wife have a child together; he adopted one of his wife's children; and he has a stepchild. (Tr. at 15-16; GE 1)

The SOR alleges 18 delinquent debts, however the debt in SOR ¶ 1.h is not a valid debt. The 17 remaining SOR debts, as amended, consist of 16 debts with balances totaling about \$62,000 and a mortgage loan that was \$34,853 past due with a balance of \$285,374. Applicant admitted owing all of the debts. (Tr. at 26; Applicant's response to SOR; GE 2-3)

Applicant attributed his financial difficulties to his 2018 marriage, where he went from providing only for himself to instantly having a family of four, which increased by another when his child was born. He and his family moved to another city in 2020 for a better job opportunity. The costs associated with the move placed a financial burden on him. He also admitted that he made poor financial decisions and lived beyond his means. (Tr. at 12-13; Applicant's response to SOR; GE 1)

Applicant and his wife bought a new home in about February 2020 in the location where they moved. The mortgage payments were \$2,288 per month for 360 months (30 years). He quickly realized that he could not maintain the mortgage payments. They moved out and rented a condominium for \$1,500 per month. The July 2022 credit report lists the mortgage account as \$34,853 past due with a balance of \$285,374. Applicant was unable to sell or otherwise resolve the loan before the property was foreclosed. The March 2023 credit report lists the account as in foreclosure with a \$0 balance. (Tr. at 21-22; Applicant's response to SOR; GE 1-3)

Applicant has not paid any of the debts alleged in the SOR. His wife is employed. He stated that his family's expenses are about \$1,000 greater each month than their income, and they are living paycheck to paycheck. He has not received financial counseling. He and his wife own two vehicles, including one that was financed in March 2020 with a loan of about \$54,800. He is looking for a second job to make up some of the difference. He stated that he expects his financial situation and income to improve, which will enable him to start paying his debts. He has about \$38,000 in federal student loans that are currently paused by COVID-19 relief and in good standing, but he will have to resume paying them at some point. He also accrued a few additional minor delinquent debts that were not alleged in the SOR and will not be used for disqualification purposes but may be considered in the application of mitigating conditions. (Tr. at 14-15, 17-25, 29; Applicant's response to SOR; GE 1-3)

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, including delinquent debts and a foreclosed mortgage loan. AG ¶¶ 19(a) and 19(c) are applicable.

The debt alleged in SOR ¶ 1.h is not a valid debt. SOR ¶ 1.h is concluded for Applicant.

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; and

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

Applicant attributed his financial difficulties to his 2018 marriage, where he went from providing only for himself to instantly having a family of four, which increased by another when his child was born. He and his family moved to another city in 2020 for a better job opportunity. The costs associated with the move placed a financial burden on him. He also admitted that he made poor financial decisions and lived beyond his means.

Applicant has not paid any of the debts alleged in the SOR. His wife is employed, but his family's expenses are about \$1,000 greater each month than their income, and they are living paycheck to paycheck. He and his wife own two vehicles, including one that was financed in March 2020 with a loan of about \$54,800. He stated that he is looking for a second job and plans to pay his debts. However, 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).

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. AG ¶¶ 20(a) through 20(d) do 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 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.

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
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.r:	Against 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