



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



In the matter of:)
)
) ISCR Case No. 22-02180
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2023

Decision

PRICE, Eric C., 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

Applicant submitted a security clearance application (SCA) in May 2022. (Item 2) On November 9, 2022, the Department of Defense Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. (Item 1) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 1) Department Counsel submitted the Government's written file of relevant material (FORM), dated February 8, 2023, including Items 1 through 6. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant acknowledged receipt of the FORM on March 13, 2023, but submitted no response. There were no objections by Applicant; Items 1 through 6 are admitted into evidence.

Findings of Fact

Applicant is 47 years old. He has been employed as a manufacturing planner for a defense contractor since May 2022. He worked in various positions for six other employers from January 2017 until May 2022. He was unemployed from May 2018 to December 2018, March 2019 to October 2019, and January 2020 to February 2020. He received credit counseling in February 2015. (Items 2, 3, 4 at 26)

Applicant attended college from September 2008 to November 2010 and earned an associate degree in 2010. He married in November 2001 and divorced in May 2005. He has two adult children (ages 23 and 20). (Items 2, 3)

The SOR alleges 28 delinquent debts, totaling approximately \$88,500, including 16 delinquent student loans totaling \$81,488 and a Chapter 7 Bankruptcy. Applicant admitted all SOR allegations, with explanation. (Item 1 at 1-5)

Applicant attributed his financial difficulties to his 2005 divorce, being a single parent of two children, unemployment, and costs associated with his mother's care after she became ill in 2019, including medical and funeral costs. (Item 3 at 2)

The evidence concerning debts alleged in the SOR is summarized below.

SOR ¶ 1.a: Chapter 7 Bankruptcy filed and discharged in 2015. Applicant admitted the allegation. (Item 1) He filed for bankruptcy in February 2015 and was granted discharge in May 2015. (Item 4 at 1, 3, 27; Item 5 at 2) Bankruptcy records show \$68,270 in total non-priority unsecured debt and that his student loan obligations were not discharged. (Item 4 at 12-13, 18-19, 28)

SOR ¶ 1.b-1.q: student loans placed for collection totaling approximately \$81,488. Applicant admitted each allegation noting that the debts "ha[ve] not been resolved." (Item 1 at 1-3) He told a government investigator that he incurred the loans while he attended college from 2008 to 2010. He acknowledged that he had not made any payments on the loans and that he had no real reason for failing to do so. He also said that he contacted the creditor in 2014 and set up a repayment plan with monthly payments of \$50 but did not follow through with payments. He noted that the loans had been in forbearance since 2020 because of COVID-19 relief and stated his intent to establish a repayment plan when that relief ends. (Item 3 at 3-4) Credit reports from May 2022 and February 2023 show each student loan account as placed for collection. (Item 5 at 2-6, Item 6 at 6-11)

SOR ¶ 1.r: telecommunication collection account for \$1,762. Applicant admitted the allegation, noting that “[t]he account has been removed from [his account].” (Item 1 at 3) He reported that this debt was for his phone service account, that the creditor contacted him in April 2022 about settling the account, that he had not attempted to pay this debt because he did not have sufficient funds to do so, and that he intended to contact the creditor to set up a repayment plan. (Item 3 at 2-3) The May 2022 credit report shows this account as placed for collection. (Item 5 at 6) The February 2023 credit report does not list this account. (Item 6) This debt is not resolved.

SOR ¶¶ 1.s, 1.z: credit accounts charged off for \$1,262 and \$160. Applicant admitted the allegations, noting that the accounts “ha[ve] not been resolved.” (Item 1 at 3-4) He told a government investigator that the accounts were credit cards that he used for his daughter’s and his expenses. He said that he had not responded to emails from the first creditor and has had no contact with the second creditor. He stated his intent to contact both creditors to set up repayment plans. (Item 3 at 2-3) Credit reports from May 2022 and February 2023 show each account as charged off. (Item 5 at 7-8, Item 6 at 1,5) These debts are not resolved.

SOR ¶ 1.t: credit collection account for \$824. Applicant admitted the allegation and said that he was “currently making payments.” (Item 1 at 3) He submitted evidence that he had entered a payment agreement with the creditor, that the account balance had been reduced to \$776 after his January 2023 payment, and that he was scheduled to make monthly payments of about \$28 until November 2024. (Item 1 at 9-13) The February 2023 credit report showed a past due balance of \$804 for this collection account. (Item 6 at 5)

SOR ¶ 1.u: collection account for \$697. Applicant admitted the allegation, noting that the account “has not been resolved.” (Item 1 at 3) He reported that he used this credit card account for his daughter’s college expenses and stated his intent to resolve this debt. (Item 3 at 4) The May 2022 credit report shows the account as placed for collection in the amount alleged. (Item 5 at 7) This debt is not resolved.

SOR ¶¶ 1.v-1.w: collection account for \$617 and credit card charged off for \$615. Applicant admitted the allegations, declared the debts had been paid, and submitted evidence that the accounts were resolved in June 2022 and November 2022, respectively. (Item 3 at 3, 8; Item 6 at 6) These debts are resolved.

SOR ¶¶ 1.x-1.y: telecommunication collection accounts for \$585 and \$490. Applicant admitted the allegations, noting that the accounts “ha[ve] not been resolved.” (Item 1 at 3-4) He told a government investigator that that he intended to contact the first creditor to dispute the erroneous service charge and that he would contact the second creditor to establish a payment plan. (Item 3 at 3-4) The May 2022 credit report shows the accounts as placed for collection in the amounts alleged. (Item 5 at 8) These debts are not resolved.

SOR ¶¶ 1.aa-1.bb: charged off credit accounts with \$0 balances. Applicant admitted the allegations. (Item 1 at 4) I find for Applicant on both allegations because the May 2022 credit report reflects that both debts were transferred or sold and had no balance due. (Item 5 at 9-10)

Policies

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of the national security." 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; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the evidence in the FORM establish a history of financial problems. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 provides conditions that could mitigate security concerns. Five potentially apply 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;

(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 has a long history of financial problems. In 2015, he had a substantial amount of delinquent debt discharged in Chapter 7 bankruptcy, but his delinquent student loans were not discharged (SOR ¶ 1.a). The SOR alleges 28 delinquent debts, totaling approximately \$88,500, including 16 delinquent student loans totaling \$81,488. He has settled two SOR debts totaling \$1,232 (SOR ¶¶ 1.v-1.w) and entered a payment agreement to resolve a third debt (SOR ¶ 1.t). I also found for Applicant on SOR ¶¶ 1.aa-1.bb, because both debts had been transferred or sold with no balance due.

Applicant admitted that he has not made a single payment on the student loan debt alleged in SOR ¶¶ 1.b-1.q, which he incurred from 2008 to 2010, and that now totals \$81,488. He acknowledged that the debts alleged in SOR ¶¶ 1.r, 1.s, 1.u, 1.y, and 1.z had not been resolved and stated his intent to attempt to resolve them. He has not submitted documentary evidence of payment on or efforts to resolve these 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 ¶ 20(a) is not established. Applicant's remaining delinquent debts are long-standing, ongoing, and were not incurred under circumstances making them unlikely to recur. The fact that he incurred additional delinquent debt after a bankruptcy discharge of more than \$68,000 in unsecured debt suggests that the likelihood of continuation or recurrence of his financial problems remains unacceptably high.

AG ¶ 20(b) is not fully established. Applicant's financial difficulties following his 2005 divorce and being a single parent of two children, unemployment, and costs associated with his mother's care and funeral were conditions largely beyond his control. However, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) is not established because Applicant submitted no evidence of financial counseling.

AG ¶ 20(d) is not fully established. He has settled the debts alleged in SOR ¶¶ 1.v-1.w totaling \$1,232, and has entered into, and apparently complied with a payment agreement to resolve the \$824 debt alleged in SOR ¶ 1.t. However, he provided

insufficient evidence to support a conclusion that he has initiated or is adhering to a good-faith effort to repay his creditors, or otherwise resolve debts alleged in SOR ¶¶ 1.b-1.s, 1.u, and 1.x-1.z.

AG ¶ 20(e) is not fully established. Applicant admitted the allegation in SOR ¶ 1.x and said he intended to dispute the erroneous service charge, but he has provided no evidence that he disputed the charge or to substantiate the basis for a dispute, and has not provided evidence of actions he has taken to resolve the issue.

Applicant bears the burdens of production and persuasion in mitigation. He is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). Applicant has not met his burden.

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 considered Applicant’s age, education and employment history; that his financial problems were caused, in part, by circumstances beyond his control, and that he has acted responsibly regarding some of his debts.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

