



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



In the matter of:)
)
) ISCR Case No. 21-01947
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2023

Decision

RICCIARDELLO, Carol G., 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

On February 1, 2022, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 on June 8, 2017.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on February 1, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 14, 2023,

scheduling the hearing for April 11, 2023. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 8. Applicant testified and offered Applicant Exhibits (AE) A through I. There were no objections to any of the exhibits and they were admitted in evidence. The record remained opened until April 25, 2023, to permit Applicant time to provide additional evidence. Applicant offered AE J through O (each exhibit has multiple documents and emails attached to them). There were no objections, and all were admitted into evidence, and the record closed. DOHA received the hearing transcript (Tr.) on May 1, 2023.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a and denied the allegations in ¶¶ 1.b and 1.c. Applicant's admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He earned a bachelor's degree in 2001 and a graduate certificate in 2005. He has never been married and has no children. He has worked for his current employer since early 2020 and has no periods of unemployment. He testified that he has held secret and top-secret clearances in the past. He is also self-employed with his own business. (Tr.18-20, 30; GE 1)

In 1998, Applicant filed Chapter 7 bankruptcy. He testified he had about \$10,000 of credit card debt that was discharged. He said he learned from his mistakes. (Tr. 28-29, 58, 60; GE 7)

Applicant testified that in 2008 to 2010 he purchased three rental properties. In approximately 2015 he could no longer pay the mortgages on all three. He testified that he was attempting to find an amicable resolution with the creditors, but he was unable, so he walked away from two of the properties and stopped paying the mortgages. He retained one property, because he said it was viable, but he could not provide information as to what happened with the other two properties when he defaulted on the payments. He admitted the charged-off mortgage alleged in SOR ¶ 1.c (\$67,844) but did not provide any information as to status of the property. It is reflected as charged off on his January 2022 credit report. (Tr. 24-25, 47, 51-57; GE 2)

The debt in SOR ¶ 1.b (\$9,463) is a credit card debt from a home improvement store. The creditor filed a lawsuit and a default judgment was entered against him in September 2017. In Applicant's July 2018 statement to a government investigator, he acknowledged the legitimacy of the debt. He used this credit card to pay for maintenance and improvements for rental property he owned in approximately 2015. When he decided he could no longer afford to keep the rental property, he stopped paying the credit card. He told the investigator he could afford to pay it but had mentally erased it because it had to do with his foreclosed property. He testified that he washed his hands of the property he had purchased and the items that related to them. He testified he was unaware of the

default judgment that was entered against him for the debt. He received the government's exhibits with a copy of the default judgment in March 2022. He testified he can afford to pay the debt but has not. Applicant testified that he has not had financial counseling. (Tr. 41-46, 60; GE 2, 4, 6)

In Applicant's April 2017 security clearance application (SCA) he disclosed foreign travel for pleasure from 2007 to 2017 (Brazil, Dominican Republic, Colombia, Thailand, Costa Rica, United Kingdom, Netherlands, Thailand, Bahamas, Costa Rica, and Canada). Many years he made multiple trips, and in 2016 he took seven trips for personal enjoyment. (Tr. 46-47, 50-51; GE 1)

Applicant rented an apartment in 2019 and used it for his business. He did not live there. He set up multiple computer servers. He was mining cryptocurrency at this office and estimated about 70% of the time the servers were actively mining, which used a substantial amount of power and energy. He had a large utility bill. He said when he rented the premises the utilities were included. When the landlord learned he was operating a business from the premises, he moved out. Applicant testified that he always paid his rent on time. The debt is SOR ¶ 1.a (\$11,023) is the amount the landlord claims is owed for the utility bill. Applicant said he moved out in 2019 because he had computer servers in the apartment, and he was taking advantage of the electricity. He said he received something in the mail about the debt but could not remember when, and he spoke with the creditor but could not resolve the debt. He said he had his lawyer draft a response to the letter he received at the time, but the issue dropped from his mind since then. He did not produce a copy of the letter. (Tr. 32-41; GE 5)

Applicant received the SOR in February 2022 and the government's discovery in March 2022. GE 5 includes court documents for the lawsuit filed by the landlord regarding the debt in SOR ¶ 1.a. Applicant testified he was unaware it was part of a legal case. I did not find him credible. The case has not been adjudicated. Applicant testified that he could afford to pay this debt but disputes its legitimacy. (Tr. 32-41)

Applicant provided numerous documents to show that he has substantial financial resources. His annual salary is approximately \$140,000. He testified that in 2022 he netted over \$200,000 in income. The extra income was earned through his private company. He provided documents to show his investments and that he pays his bills automatically and timely. He provided spreadsheets to show his detailed budget and his excess expendable income each month to show he is fiscally responsible. He said he does not take financial risks that he cannot afford to lose. He drives a 20-year-old vehicle because he does not like car payments and only uses credit cards when he travels. He provided documents to show that he has medical and dental insurance to support he is financially stable even if he encounters health issues. He provided documents to show he goes to the gym. He provided a copy of his bank statement to show he has a current cash balance of approximately \$32,200 as of March 2023. He testified that he also has approximately \$325,000 in different investment and retirement accounts. He provided copies of his credit reports to show his credit scores are in the 700s. He does not owe a

balance on any credit cards. He also provided a detailed document that lists each allegation and government exhibit and then his response to each explaining the mitigating conditions he believed applied. He notes certain items that are no longer on his credit report. (Tr. 20-29; AE E A-I)

Post-hearing, Applicant provided a copy of GE 2 with an explanation for each item reported (AE J). He provided an email with corresponding documents dated April 11, 2023, showing he negotiated a payment plan with the creditor in SOR ¶ 1.b. He made a \$1,000 payment and the agreement is to pay \$235 a month from April 2023 through March 2026. (AE K, M) He provided a copy of a letter he sent to the District Court on April 17, 2023, regarding the court case for the debt in SOR ¶ 1.a owed for utilities to his former landlord. The letter stated that he acknowledged he was the defendant in the case, and he would pay the amount owed. (AE L, M) On April 23, 2023, he provided an email listing all of the entries on his January 2022 credit report and made comments about each entry. Next to the entry for SOR ¶ 1.b he stated it was being paid. This credit report also reflects the charged-off mortgage alleged in SOR ¶ 1.c (\$67,844). Applicant stated in his email of April 25, 2023, that he has held various different security clearances over the years and worked for different federal agencies. He loves his country. He said he cleared up any ambiguities regarding his old credit report and he is thriving financially. He does not plan on acquiring new debts and he will pay off his debts or pay on schedule as agreed. (AE O)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant chose to not pay his mortgage on a rental property because it was no longer financially advantageous to him. He decided to not pay a credit card he used to maintain the rental property because he had washed his hands of the property. He rented a residential apartment and used it for business. He disputes he owes the utility bill because he believed it was included in his rent. The above disqualifying conditions apply.

The guideline 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;
- (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; 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 debt.

Applicant chose to ignore his responsibility regarding the mortgage payments on rental property he purchased because it was no longer financially viable. He kept the one property he thought was viable. He stopped making payments in 2015, and the mortgage was foreclosed and charged off. He decided not to pay a credit card he used to maintain the property because he no longer owned the property. He said he washed his hands of it. A default judgment was entered in September 2017. He received information about the debt through discovery in March 2022. He provided a voluminous amount of information as to his financial worth and ability to pay his debts but waited until after his hearing to make payment arrangements to resolve this debt. Despite having the means to repay the whole amount, the length of time the debt has been owed, and a judgment that was entered almost six years ago, his arrangement is to make monthly payments over the next two years.

Applicant is being sued for the amount of utilities he used while operating a business in a residential apartment. That suit has not yet been adjudicated. Post-hearing, Applicant provided a copy of a letter he sent to the court saying he would pay the debt. He did not provide any other documents to show he is resolving the matter. He failed to provide documented proof to substantiate the basis of his former dispute. He claimed he had his lawyer send a letter to the creditor but he did not provide a copy. Based on his past conduct, his promise to the court to pay the debt in the future is insufficient to believe he will act responsibly.

Applicant's debts are ongoing, and based on his past conduct, I cannot find future issues are unlikely to recur. The debts were not beyond his control as he provided evidence of his substantial financial resources. He basically chose not to pay debts that he legitimately owed. He has not received financial counseling. His post-hearing actions to pay a credit card that is years old and a promise to pay utilities owed for years is not considered good faith. None of the mitigating conditions apply.

The fact that Applicant has taken some action on his years' old debts after his hearing "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961) Applicant's failure to address his delinquent debts until after realizing that they

were an impediment to obtaining a security clearance “does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation’s secrets.” ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016)

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.

Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to 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-1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge