



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



In the matter of:)	
)	
)	ISCR Case No. 22-01139
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2023

Decision

BLAZEWICK, Robert B., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 16, 2022, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 20, 2022, and requested a decision on the written record in lieu of a hearing.

The Government’s written case was submitted on January 17, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 7, 2022. As of January 17, 2023, he had not responded. The case was assigned to me on February 21, 2023. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is 43 years old. He has been employed by a defense contractor since June 2020. He retired honorably with the rank of chief warrant officer 5 from the United States Army after 23 years and three months of service in September 2020. He has held a security clearance since 2001. He has a high school diploma and is taking university courses online. The most recent information available indicates that he is married and has four children ages 24, 10, 7, and 6. He is twice divorced. (Item 3)

The SOR alleges four delinquent accounts that have been charged off totaling \$25,139 (SOR ¶¶ 1.a - 1.d) and a utility account placed for collection for \$133 (SOR ¶ 1.e). Applicant admits all the debts. Though Applicant disputes he owed the money, after the SOR's issuance, he paid the utility account. The alleged debts are listed on a March 19, 2021 credit report, an April 1, 2022 credit report, and an October 19, 2022 credit report. (Items 1, and 5-7)

Applicant reported a debt on a delinquent car loan in his Questionnaire for National Security Positions (SF 86), which he submitted in March 2021. He did not list any other delinquent debts. During his background interview in April 2021, Applicant admitted a past-due car loan that he said was not currently delinquent. He stated in March 2020 he was unable to keep his payments current due to his wife's job loss and COVID-19. He confirmed his answers in the SF-86 and noted no further debts. When confronted with the debts during his ROI, Applicant admitted them. He stated he did not list them due to an oversight regarding the requirements for listing. Applicant stated the debts alleged in SOR ¶¶ 1.b and 1.d were solo credit cards. Further, he was not aware of the debt alleged in SOR ¶ 1.c but did not dispute it. The debt alleged in SOR ¶ 1.e (a utility bill) he stated was his, but he disputed the underlying charge due to a former landlord's failure to remove him from the bill after he had moved. (Items 2-6)

Applicant admitted the debts alleged in the SOR in his response to an interrogatory from the DODCAF. For the debts alleged in SOR ¶¶ 1.a – 1.d, he admitted they were not paid, payment arrangements had not been made, and he was not making payments. He stated the alleged debt in SOR ¶ 1.e had been paid. He stated he had run into hard times with his family's expenses post his Afghanistan deployment and he overextended his family's finances. He admitted poor financial planning while on active duty. He states he had been working with a credit counseling team to pay down his debts, but these were charged off while he was actively paying on them. He states further, "[n]ow that I am retired and able to afford to fix my mistakes, I am trying to do so by leveraging planners as well as legal to reduce the amount I have to pay and fix my credit within all the laws that exist." He states that he stopped paying his charged-off debts on the advice of a wealth manager. He attached his 2021 W-2 and his 02/11/2022 pay stub as proof he has sufficient means to satisfy these debts. His personal financial statement indicates sufficient discretionary funds monthly. His credit reports also indicate he was able to pay several sizable car loans, though not always on time. (Items 4-7)

In his response to the SOR, Applicant confirmed the debts alleged in SOR ¶¶ 1.a - 1.d. He reaffirmed he was not making payments, again based on the advice of his

financial planner. He raises, for the first time, that he believes “half if not all of the charges on the cards was [sic] not [his] due to identity theft and worked with their credit fraud office, as well as the credit consulting company.” He further states that due to his inability to “pay this debt that it was moved into a credit consolidation loan.” He provided no additional corroborating information. As in his response to the DODCAF interrogatories, he again states he now has sufficient financial means, “now I have a great job, my wife is working, and we are making good money and can pay off the debt. I sent my W2s in with the original request for information showing that between retirement and salary I make over \$300k...I am in the best financial position that I have ever been in over the past 20 years that I have had a clearance.” (Item 1)

Applicant provided evidence he has sufficient means to pay off the debts but has chosen not to do so based on his financial planner’s advice. He has stated both in his response to the DODCAF interrogatories and in his response to the SOR that he “could pay of the debt, but that will not clear it from [his credit] report.” He asserted, as he did in his response to the DODCAF interrogatories, that he would “set up payments ASAP” if his clearance were at risk. (Items 1, 4)

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 several 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 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. . . . 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:

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

Applicant has a history of financial problems, including delinquent debts. He has provided evidence of sufficient financial means to pay his debts but expressed his intention to leave them unsatisfied. The evidence is sufficient to raise the above disqualifying conditions.

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's utility debt alleged in SOR ¶ 1.e was minor and has been satisfied. It does not appear on the most recent credit report. That debt is mitigated.

Applicant has known about the remaining debts for some period. He made assertions he had begun paying some of them but was then financially unable to do so while still on active duty. Though he provided evidence of his current financial situation, he has expressly chosen to ignore the remaining debts. He mentioned he may have been the victim of identity theft, that he had worked with fraud sections, and had gotten a debt consolidation loan, but provided no additional corroboration to support his statements. He was on notice his debts were of a concern to the government. He was confronted during his interview regarding concerns about these debts, received and answered the DODCAF's interrogatories regarding concerns about these debts, received and replied to the SOR specifically noting concerns about these debts, and received Department Counsel's File of Relevant Material, which also pointed to the concern over these debts. He has demonstrated he has the means to resolve them and admits to affirmatively choosing not to do so. He has stated he would attempt to do so should they put his clearance at risk. However, potential undefined intentions to resolve debts 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).

Applicant's delinquent debts are the result of his admitted overextension of family finances while on active duty and were exacerbated with his wife's loss of her job in 2020 and during the COVID-19 crises. Though he states he will attempt to resolve these debts if they will have an effect on his clearance, this inaction does not constitute good faith as

contemplated by Appeal Board precedent. It does not mitigate the security concerns raised by his conduct. It appears the primary catalyst that might lead him to address his delinquencies is the desire for a security clearance. He has had the ability to pay his debts but has chosen not to. His failure to act responsibly regarding his financial obligations preclude finding that he has good judgment. AG ¶¶ 20(a) - 20(d) are not established regarding the allegations in SOR ¶¶ 1.a - 1.d. Applicant did not meet his burden to mitigate the financial concerns set out in the SOR. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's remaining delinquent debts are not mitigated.

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 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.

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.d:	Against Applicant
Subparagraphs 1.e:	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.

Robert B. Blazewick
Administrative Judge