



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



In the matter of:)
)
) ISCR Case No. 20-01721
)
)
Applicant for Security Clearance)

Appearances

For Government:
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

July 18, 2023



Decision



GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate Financial Considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on May 30, 2019. On March 18, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 Security Executive Agent Directive (SEAD) 4 *National Security Adjudicative Guidelines* (AG) effective within DoD on June 8, 2017.

On August 30, 2022, Applicant answered the SOR in writing (Answer) and requested that his case be decided on the written record in lieu of a hearing. In his Answer Applicant admitted all 12 of the SOR allegations. On December 13, 2022, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), including documents identified as Items 1 through 9, was provided to Applicant, who received the file on January 9, 2023.

Applicant was given 30 days from receipt of the FORM to raise objections and submit material in refutation, extenuation, or mitigation. He did not reply to the FORM or submit any documentation as evidence in support of his case. The matter was initially assigned to another administrative judge and then was reassigned to me on May 24, 2023. Department Counsel's documents, identified as Items 4 through 9, are admitted into record. Based upon a review of the pleadings and the Government's evidence, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 46 years old and has been employed by a U.S. Government contractor as an engineer since May 2017. He is married and has a minor child. Applicant earned a bachelor's degree in 2005 and a master's degree in 2011. He has applied for national security eligibility in connection with his employment. He was denied eligibility for a security clearance in 2013 when he worked for a previous employer. In his August 2019 background interview, he claimed that he was never advised why his prior application for a clearance was denied. (Item 4 at 7, 13-14, 21-23, 25-26, 32; Item 5 at 1-2.)

Guideline F, Financial Considerations

The Government alleged in this paragraph of the SOR that Applicant is ineligible for a clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR lists 12 debts that are delinquent, charged-off, or in collection. The total amount of the delinquent debts is approximately \$62,000. The existence and amount of these debts are supported by Applicant's admissions in his Answer and by credit reports in the record, dated November 29, 2022; January 15, 2020; and July 3, 2019. (Items 6 through 8.)

The limited details available in the record about the 12 SOR delinquent debts are as follows:

1.a. Mortgage loan delinquency - \$18,798. Applicant defaulted on this account in or about 2019. The loan was sold. At one point, Applicant was delinquent in the amount of \$18,798, and the new owner of the loan commenced foreclosure proceedings. As noted, Applicant admitted this allegation in his Answer. The most recent credit report in the record, dated November 29, 2022, which was submitted by the Government (the 2022 Credit Report), reflects that the loan had been modified and had a zero balance, indicating

that his large past-due balance was resolved at one point. Applicant has provided no more recent information to establish that he is current on his mortgage loan. The record contains no further information regarding the payment status of this loan. This debt is resolved. (Item 5 at 3; Item 6 at 10; Item 7 at 1; Item 8 at 6, 11.)

1.b. Credit-card debt - \$9,878. Applicant defaulted on this account in 2018. The 2022 Credit Report reflects that this debt has been settled, and the account has a zero balance. This debt is resolved. (Item 6 at 11; Item 7 at 2; Item 8 at 9.)

1.c. Credit-card debt \$9,514. Applicant defaulted on this account in 2018. The 2022 Credit Report reflects that this charged-off debt is outstanding. This debt is not resolved. (Item 6 at 10; Item 7 at 2; Item 8 at 8.)

1.d. Credit-card debt - \$9,311. Applicant defaulted on this account in 2018. The record contains a document evidencing that the creditor obtained a judgment against Applicant in February 2020 in the amount of \$13,447. The 2022 Credit Report reflects that this debt has been settled, and the account has a zero balance. This debt is resolved. (Item 6 at 8; Item 7 at 2; Item 8 at 10; Item 9.)

1.e. Credit-card debt - \$3,909. Applicant defaulted on this account in 2018. No further information was provided. This debt is not resolved. (Item 6 at 8; Item 7 at 2; Item 8 at 5.)

1.f. Credit-card debt Collection Account - \$2,529. Applicant defaulted on this account in 2018. The 2022 Credit Report reflects that this debt has been settled, and the account has a zero balance. This debt is resolved. (Item 7 at 2; Item 8 at 8.)

1.g. Credit-card debt Collection Account - \$1,364. Applicant defaulted on this account in 2018. No further information was provided. This debt is not resolved. (Item 6 at 9; Item 7 at 2; Item 8 at 7.)

1.h Credit-Card Debt - \$1,272. Applicant defaulted on this account in 2018. No further information was provided. This debt is not resolved. (Item 6 at 11; Item 7 at 2; Item 8 at 4.)

1.i. Credit-card debt - \$1,256. Applicant defaulted on this account in 2018. The debt does not appear on the 2022 Credit Report. There is no affirmative evidence in the record that Applicant has satisfied this debt. This debt is not resolved. (Item 6 at 9; Item 7 at 2.)

1.j. Collection Account - \$370. Applicant defaulted on this telecom account, and the account was placed for collection. Applicant disputed this account. It does not appear on the 2022 Credit Report. There is no affirmative evidence in the record that the dispute was resolved in Applicant's favor or that he otherwise satisfied this debt. This debt is not resolved. (Item 6 at 10; Item 7 at 3.)

1.k. Credit-card debt - \$3,072. Applicant defaulted on this account in 2018 or early 2019. The Government's July 3, 2019 credit report in the record reflects that Applicant disputed this account and that the creditor resolved the dispute in Applicant's favor. The debt does not appear in either of the Government's more recent credit reports in the record. This debt is resolved. (Item 6 at 9.)

1.l. Collection Account - \$684. Applicant defaulted on this insurance account, and the account was placed for collection. Applicant disputed the account. It does not appear in either of the Government's more recent credit reports in the record. There is no affirmative evidence in the record that the dispute was resolved in Applicant's favor or that he otherwise satisfied this debt. This debt is not resolved. (Item 6 at 8.)

Applicant wrote in his Answer that he invested money borrowed from his credit cards to start a real estate investment business in 2017. He could not maintain the payments on the debt and defaulted on the accounts. He asserted that he enrolled in a debt-consolidation plan (the Plan) to address his delinquent debts and expected to be concluded with the payment of his debts by the end of 2022. He provided no additional or updated information in his Answer or subsequently. He has also not explained why the Plan did not pay all of his debts by the end of 2022 or provide an update on the status of the Plan or whether he is still making payments into the Plan. (Answer at 4.)

In his background interview in August 2019, Applicant reported that he entered into the Plan in July 2018 and under the Plan he consolidated about \$35,000 of debt. He pays the debt-consolidation company \$540 per month, and the Plan will continue for 36 months, or until July 2021. (GE 5 at 2.)

Applicant submitted no documentation or additional information concerning his debts or current income. The Government's 2022 Credit Report is the most recent information available in the record. The record evidence reflects that SOR debts 1.c, 1.e, 1.g, 1.h, 1.i, 1.j, and 1.l remain unpaid. Except as noted, Applicant provided no information detailing his plans for resolving his outstanding delinquent debts or demonstrating other indicia of trustworthiness and good judgment. In addition, I am unable to make a credibility assessment as Applicant elected not to have a hearing.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred at least \$17,000 in past-due accounts over the last four or five years that remain unresolved. These debts establish the application of the foregoing disqualifying conditions and shift the burden to Applicant to mitigate the Government's security concerns.

The guideline lists the following five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, or 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.

The record evidence does not fully establish any of the above mitigating conditions. Applicant incurred credit-card debt to finance the start-up of a business venture. He obtained some financial assistance from the debt-consolidation company and appears to have attempted to act responsibly by paying some of his debts. He provided no information as to whether his payments were made through the Plan or directly by Applicant. He advised in his background interview that his debt payments under the Plan would be completed by July 2021, and he updated that information in his Answer writing that his debt payments would be completed by year-end 2022. The 2022 Credit Report reflects that as of November 29, 2022, he still had a significant number of unpaid debts.

Applicant did not provide any updated information when given the opportunity to respond to the FORM. There are no clear indications that Applicant's delinquent debts are being resolved or are under control. Similarly, there is insufficient information to establish that he is adhering to a good-faith effort to deal with his overdue creditors or otherwise resolve his outstanding debts. Lastly, Applicant has disputed some of his debts, but he failed to provide documented proof to substantiate the basis of the disputes or provide evidence of actions to resolve the issues. There is insufficient evidence to conclude that Applicant's behavior is unlikely to recur. Overall, his management of his finances casts doubts on his current reliability, trustworthiness, and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not mitigated the security concerns raised by his past-due indebtedness. Financial irresponsibility is likely to continue, and the potential for pressure, exploitation, or duress remains undiminished. Overall, the record evidence leaves me with substantial questions and

doubts as to Applicant's suitability for national security eligibility and a security clearance at the present time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g through 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge