



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXX)	ISCR Case No. 23-00670
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O' Connell, Department Counsel
For Applicant: *Pro se*

07/26/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern raised by his problematic financial history. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on May 9, 2022. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 4, 2023, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on April 6, 2023, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On April 26, 2023, Department Counsel submitted the

Government's file of relevant material (FORM), including documents identified as Items 1 through 11. DOHA sent the FORM to Applicant on the same day, who received it on May 10, 2023. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on May 31, 2023 (Response). The Government did not object to the Response. The SOR and the Answer (Items 1 and 4, respectively) are the pleadings in the case. Items 5 through 11 are admitted without objection. (Items 2 and 3 are non-evidentiary administrative documents.) The case was assigned to me on July 17, 2023.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 62 years old and a high school graduate. He has been married three times, and the most recent marriage (March 2010) ended in divorce in April 2021. He has an adult adopted son. Applicant served on active duty in the U.S. Navy from July 1985 until August 1997 when he received an honorable discharge. Since February 1998, he has worked for the same defense contractor. He held security clearances in that position since 2004. Before that, he held clearances in the U.S. Navy for 12 years. (Items 5 and 6; Response.)

The SOR alleged 11 delinquent consumer accounts totaling \$32,172. (Item 1.) Applicant admitted those allegations, stating: "I have attempted to make payment arrangements with [the collection agent for the first five debts (\$16,619)] but they wanted half of the total up front and I do not have it at this time. I am working to save money and try again." (Item 4.) This collection agent filed a judgment against him for \$12,644 in August 2021. (Item 10.) The SOR accounts went into collection in the spring of 2020. The Government's credit reports support the SOR allegations. (Items 7-9.) Applicant disclosed his debts in his SCAs. (Items 5 and 6.)

In his January 10, 2023 Personal Subject Interview (PSI), Applicant explained his current financial difficulties. His problems began in about March 2019 and continued into 2020. His spouse owned a rental property. The tenants left the rental with unexpected damages that cost him \$1,300 to repair. His spouse worked for a medical contractor, but due to the COVID pandemic her contractor lost business. Her pay was cut by 50%. He had to pick up some of her financial obligations. Applicant had relied on overtime, but due to the COVID pandemic and technical reasons, the project that afforded him overtime was unexpectedly cancelled. That adversely impacted his income. Those financial setbacks strained their marriage. Then his spouse left him, and they divorced in April 2021. That also caused a further strain on his finances. (Item 11; Response.)

In his PSI, Applicant acknowledged that when he started missing his bill payments, he did not respond to his creditors. He also hesitated to contact a debt counselor, because he thought it might adversely affect his security clearance. He has made no attempts until recently to contact his creditors. He began working overtime again in February 2022. He

has cut back on expenses, uses a spreadsheet to monitor bills, has made a budget, and is doing better financially. Before their financial issues arose, he and his spouse did live beyond their means. (Item 11.) They made enough, however, to support their expenses. (Response.)

Applicant intends to pay his creditors by focusing first on the judgment creditor. At the time of his PSI, he had negotiated a settlement with the judgment creditor to make a \$6,870 down payment followed by \$950 per month for a total of \$13,741 with interest. He was unable to document that agreement, because he has not yet begun payments. He was working towards accumulating the funds necessary for the down payment. (Item 11.)

In his May 26, 2023 Response, Applicant reiterated the causes of his financial difficulties and that he is saving funds for the down payment. He also enumerated the numerous Navy achievement medals, service ribbons, good conduct medals, and citations he was awarded in his 12 years in the U.S. Navy. He also noted his professional achievements during his 25 years working for the same defense contractor, where he rose from a technician to an upper level manager. In those capacities, he trained numerous personnel in the proper handling of classified material. In those 37 years, he never had a security incident. (Response; Items 5 and 6.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

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

The SOR allegations are established by Applicant's admissions and his credit reports. AG ¶¶ 19(a) and 19(c) apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. Having reviewed all of the mitigating conditions under AG ¶ 20, I find the following 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; and
- (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.

I have considered mitigating condition AG ¶ 20(a). Applicant's SOR debts went into collections in the spring of 2020. That is not that long ago. The debts are numerous and remain in default today. His debts are not mitigated under AG ¶ 20(a).

I have considered mitigating condition AG ¶ 20(b). First, the financial problems must have been caused by conditions "largely beyond" an applicant's control. Second, the applicant must have acted responsibly under the adverse conditions he confronted.

There were multiple causes of Applicant's financial woes. The tenants of his spouse's rental property vacated it leaving \$1,300 worth of unexpected damages that he had to repair to make it habitable. Next, his spouse worked in the medical business. The economic impact of the COVID pandemic on her employer caused her pay to be reduced by half. Then, the project he had been relying on for overtime pay was unexpectedly cancelled due to COVID and technical reasons. All those financial hardships strained the marriage. He and his spouse separated and then divorced in April 2021. That too harmed him financially. The foregoing conditions were largely beyond his control. Applicant has satisfied the first element of mitigating condition AG ¶ 20(b).

The second element asks whether the applicant has acted responsibly under the adverse circumstances he confronted. Here, Applicant elected to address first the debts owed to the judgment creditor. That was not an irresponsible choice. But because he has yet to make any payments under the agreement with that creditor, he cannot document that agreement. The Appeals Board has routinely held that it is reasonable to expect applicants to produce documentation supporting their efforts to resolve debts. See, e.g., ISCR Case No. 20-00615 at 2 (Jun. 7, 2021). In addition, without having made any payments under that agreement, he has not established "a meaningful track record" that the Appeals Board requires to conclude that an applicant is on track to resolve unpaid debts. The Appeals Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). His debts are not mitigated under AG ¶ 20(b).

The Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and its factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

I have given full and positive weight to Applicant's 12-year Naval career and his 25-year career in the private defense industry. He served the Navy commendably and continued that high caliber of service in the private sector. Applicant leaves me, however, with questions about his eligibility and suitability for a security clearance under these

particular circumstances. For these reasons, I conclude that Applicant has not mitigated 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.k:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge