



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



In the matter of:)
)
) ISCR Case No. 21-02543
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/26/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On April 26, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR on May 2, 2022 (Answer). He requested a hearing before an administrative judge. The case was assigned to me on April 6, 2023.

The hearing was convened as scheduled on June 22, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 5 without objection. Applicant testified at the hearing but did not present any documentary evidence. At Applicant's request, I left the record open until July 6, 2023, for him to provide post-hearing documents. He timely submitted Applicant Exhibit (AE) A that I admitted without objection. I received a transcript (Tr.) of the hearing on June 29, 2023.

Findings of Fact

Applicant is a 38-year-old employee of a government contractor for whom he has worked since November 2019. He has been employed by government contractors without a period of unemployment since about July 2014. He has been married twice. His first marriage was from 2008 until 2013. He remarried in November 2014. He has a 13-year-old child who lives in Country A with his ex-wife, and three children, ages seven, four, and two, with his current wife. He also has an adult stepson who lives in Country A. He and his wife are expecting another child. He earned a high school diploma in 2002 and has taken some college courses but has not earned an undergraduate degree. He served with the Army National Guard from 2002 until 2007, when he earned an honorable discharge. He also served on active duty with the Army from 2007 until 2013 and received a general discharge under honorable conditions for patterns of misconduct. (Tr. 21-41, 43-44, 88-92; GE 1, 2)

In the SOR, the Government alleged Applicant's eight delinquent debts totaling approximately \$60,500 (SOR ¶¶ 1.a through 1.h). These delinquencies consist of the following: a credit card (SOR ¶ 1.a); a personal loan (SOR ¶ 1.b); car loans (SOR ¶¶ 1.c and 1.d); and tuition for college courses (SOR ¶¶ 1.e through 1.h). He admitted the SOR allegations with additional comments. The SOR allegations are established by his admissions and the Government's credit reports. (Answer; GE 3-5)

The debts listed in SOR ¶¶ 1.a through 1.d, are owed to the same creditor. Applicant opened these accounts in 2014 and 2015 and became delinquent on them in about December 2015. He called the creditor to try to make a payment arrangement in 2020, early 2021, and May 2021, but he claimed the creditor asked him to work with the collection agency to which the debts had been assigned. The collection agency for these debts has not contacted him and he has not been able to obtain its contact information. His last payment on these accounts was in November 2015 and the last time he attempted to contact either the creditor or the collection agency was in May 2021. He has not resolved these debts. (Tr. 45-53, 55-63, 65-66; Answer; GE 1-5)

The debts listed in SOR ¶¶ 1.e through 1.h for college tuition are owed to the college he attended. He incurred these debts from August 2016 until May 2017. The college notified him that he was delinquent on these debts in the winter of 2017. During the winter of 2017, he went to the college to try to resolve the issue. He told a representative of the college that he thought the GI Bill should have covered his tuition. He left the college that day thinking that the GI Bill would pay his outstanding tuition and he believed the matter was resolved. (Tr. 66-72; Answer; GE 1-3)

He did not follow up again with the college until 2020 when he received a collection letter from a collection agency regarding his outstanding tuition. He called the collection agency and made a payment arrangement with them. He also went back to the college and explained again that he thought the GI Bill should cover the tuition. He left the college once again believing that the matter was resolved, and the GI Bill would pay the tuition. Based upon this understanding, he did not make any payments pursuant to the payment arrangement he made with the collection agency. He noticed that the

tuition debts no longer appear on his credit report, so he took that fact as further evidence that the debts had been resolved. He has not followed up with either the college or the collection agency since 2020 to determine whether the tuition bill has been satisfied. He provided no documents showing that the GI Bill should or did pay his tuition, which is especially important given the nature of his discharge from the Army. These debts appear on the October 2020 credit report, but they do not appear on the December 2021 or the May 2023 credit reports. (Tr. 66-72; Answer; GE 1-3)

Applicant's financial issues were caused by inadequate income to cover his living expenses, especially from 2014 until 2018 while he lived in Country A (where he claimed cost of living expenses were inordinately high) and worked for a government contractor there. He claimed his tuition delinquencies were also caused by a misunderstanding involving the availability of GI Bill benefits. (Tr. 19-21, 47-49, 66-72; Answer; GE 1, 2)

Applicant claimed that after he moved back to the United States in late 2018, his financial situation has improved dramatically, especially after he began working for his current employer in November 2019. Beginning in November 2019, he earned between \$103,000 and \$105,000, annually. At the time of the hearing, he earned \$111,000, annually. He receives about \$1,300 per month in disability benefits from Veterans Affairs (VA). He plans to apply for more, as he is not currently being compensated for injuries he suffered while in the Army National Guard. He claims that he can pay his financial obligations and that he has a surplus of about \$2,300 at the end of each month. He has a savings account with about \$200 in it, but claimed it normally has a balance between \$500 and a couple of thousand dollars. He claimed the balance is lower right now because he had to pay unforeseen veterinary expenses. He has a retirement account through his current employer with a balance of about \$26,000. He also has a retirement account with one of his employers in Country A, but he does not know the balance. He provided a written budget that he claims he follows. He also claimed that he owns a wrecked car located in Country A that needs a new motor that he can potentially sell to help pay his SOR debts. (Tr. 32, 37-40, 75-76, 84-86, 110-115; Answer; AE A)

In 2019, Applicant attended two online financial counseling courses. For one of these courses, he watched a video and read a book on how to become debt free. In January 2023, he financed the purchase of a new sport utility vehicle (SUV) for \$71,000. He traded in a vehicle he purchased in 2020 and used the value of that vehicle as a down payment for the SUV. He pays approximately \$1,150 per month on this vehicle. In March 2023, he financed the purchase of a used compact car for \$17,000. He traded in another vehicle that he purchased in 2020 and used the value of that vehicle towards the down payment of the compact car. He pays approximately \$330 per month on this vehicle. (Tr. 77-79; GE 5)

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 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."

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 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 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. 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.

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

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

Applicant had eight delinquent debts totaling approximately \$60,500. He became delinquent on these debts between 2015 and 2017. This evidence shows that he has a history of being unable to pay his debts and not meeting his financial obligations. The above listed conditions are applicable, thereby shifting the burden to Applicant to provide evidence in mitigation.

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 has not provided sufficient evidence that he has resolved any of the SOR debts. He does not claim to have resolved the debts in SOR ¶¶ 1.a through 1.d. He assumed the debts in SOR ¶¶ 1.e through 1.h have been resolved because he believed the GI Bill should have paid for them and they no longer appear on his credit report. While the tuition debts no longer appear on his credit report, there are many reasons other than favorable resolution that a debt does not appear on a credit report. The burden falls on Applicant to show that his established debts have been resolved. He has not provided sufficient evidence that he has done so. Since 2020, he has not contacted the creditor or the collection agency to determine the status of the tuition debts. He has not provided documents to show that the GI Bill should or did satisfy these debts. His financial issues are ongoing, and I cannot find they are unlikely to recur. AG ¶ 20(a) does not apply. This lack of evidence of resolution also means that AG ¶ 20(d) does not apply.

Applicant's financial issues were caused by underemployment and not understanding whether GI benefits would apply. Underemployment is arguably beyond his control. For AG ¶ 20(b) to fully apply, he must also show that he acted responsibly under the circumstances. He has not. While he attempted to resolve the debts initially, he has not contacted the creditor or collection agency since May 2021 for the debts in SOR ¶¶ 1.a through 1.d., and since 2020 for the debts in SOR ¶¶ 1.e through 1.h. Instead of resolving his existing delinquencies, he has incurred significant, additional debt by financing the purchase of new cars, including an expensive SUV. AG ¶ 20(b) does not fully apply.

While Applicant has received some financial counseling, his unresolved debts show that his financial problem is not resolved and is not under control. His financing of the aforementioned SUV after taking courses on becoming debt free further shows that the counseling did not help resolve his financial problems. AG ¶ 20(c) does not fully apply.

Applicant has not provided documentary evidence that GI Bill benefits should have covered his tuition. His failure to inquire as to the status of these tuition debts since 2020 means he has not taken sufficient action to resolve any dispute he might have. AG ¶ 20(e) does not apply. As none of the mitigating conditions are fully applicable, the Guideline F security concerns continue to raise questions and doubts about his reliability, trustworthiness, and good judgment.

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 have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's military service.

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.h:	Against 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.

Benjamin R. Dorsey
Administrative Judge