



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 21-02468
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq. Department Counsel
For Applicant: *Pro Se*

08/16/2023

Decision

KATAUSKAS Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations. Eligibility is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on July 25, 2020, in connection with his employment by a defense contractor. On January 19, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD issued the SOR under Executive Order (Exec. Or.) 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 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

On January 30, 2023, Applicant submitted an answer to the SOR (Answer) in which he requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On April 11, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 5. On April 12, 2023, the FORM was mailed to Applicant. Applicant received the FORM on May 1, 2023. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted no response. Government Items 1A and 1S, the SOR and the Answer, respectively, are the pleadings in the case. Items 2 through 5 are admitted without objection. The case was assigned to me on August 8, 2023.

Findings of Fact

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact.

Applicant is 48 years old and has been married since August 2003. He has four adult children and one adult stepchild. His three oldest children are from previous relationships. None of those three children live with him. He was awarded his GED in 1992 or 1993 and has some college credits. He reported recent periods of unemployment from May to July 2018 and from March to July 2020. Since July 2020, he has been employed by a defense contractor. (Items 2 and 3.)

Under Guideline F, the SOR alleged that Applicant has: (1) two child support accounts in collection totaling \$30,910 (SOR ¶¶ 1.a and e); (2) four federal student loans in collection totaling \$19,273 (SOR ¶¶ 1.c, d, f, and g); (3) three delinquent consumer accounts totaling \$4,322 (SOR ¶¶ 1.b,h, and n), and (4) eight medical accounts in collection totaling \$3,857 (SOR ¶¶ 1.i – m, o - q). The SOR debts total \$58,362. (Item 1S.)

Applicant denied the two child support allegations (\$30,910). He admitted the four student loan allegations (\$19,273). He denied one consumer account allegation (\$684) and admitted the other two allegations (\$3,638). He denied the first six medical account allegations (\$3,683) and admitted the last two (\$175). (Item 1A.)

During his November 2, 2020 personal subject interview (PSI), Applicant discussed the child support allegations he denied. They were based on two court orders for back child support. The three children he fathered outside of his marriage applied for welfare and gave the child support agency his name as their father. The agency imposed a garnishment of his wages. He could not recall when garnishment was imposed, but his wages are still being garnished. He plans to find out the status of those accounts but has no reason to disagree with the information reported. He did not provide documents showing the current garnishment. (Item 3.)

On the August 8, 2020 credit report, the \$18,420 child support account was assigned to collection in September 2018 and is marked CLOSED. The \$12,490 child support account is not reported. (Item 5.) On the November 9, 2021 credit report, the \$12,490 account was opened in August 1995; the last payment (\$856) and the first major delinquency were in October 2021. The \$18,420 account is not reported. The children are now 28, 29, and 31 years old. (Items 2 and 4.)

During his PSI, Applicant also discussed the medical account delinquencies he denied. He was aware that some of his medical bills went into collections. He has a medical condition that requires frequent medical care. Due to periods of unemployment and other bills to pay, he got behind on paying medical bills. In addition, his medical insurance did not always pay its portion of the bills timely. Also, he was not always being notified of all his bills. (Item 3.) His explanation about unemployment playing a role in his medical bill delinquencies is consistent with the record. Seven of his eight medical account delinquencies were assigned to collection just before, during, or just after his 2018 and 2020 periods of unemployment. (Items 4 and 5.)

During his PSI, Applicant discussed his federal student loans. He did not list them, because the school he attended, ITT Technical Institute (ITT), was found to have been operating unethically causing students to accumulate excessive debt. The school was eventually shut down, and he never received a degree. On August 16, 2022, the U.S. Department of Education announced a \$3.9 billion group discharge for 208,000 borrowers who attended ITT between January 1, 2005, and its closure in September 2016. The Department found that ITT: “[I]ntentionally misled students about the quality of their programs in order to profit off federal student loan programs with no regard for the hardship this would cause . . . These borrowers will have the federal student loans they received to attend ITT discharged without any additional action on their part.”

<https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>

The credit reports show that Applicant’s federal student loans were opened between November 2010 and April 2013. (Items 4 and 5.) They are, therefore, covered by the Government’s discharge of ITT student loans.

The Government’s credit reports support the three consumer debts (\$4,322) (SOR ¶¶ 1.b, h, and n). (Items 4 and 5.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, “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, the administrative judge must consider the adjudicative guidelines. These guidelines, which

are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The 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, 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.

Analysis

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 followings conditions are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

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

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. I have reviewed the seven mitigating conditions under AG ¶ 2. The following is the only one 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.

The child support debts apparently had their origins in 1995. That is quite a long time ago. They have, however, persisted. Applicant's payment (\$856) and the first major delinquency were as recent as October 2021. And those debts are still in collection. Thus, they are still being tracked by credit reporting agencies. The magnitude and recency of those debts preclude the application of AG ¶ 20(a). I find against Applicant on SOR ¶¶ 20 1.a and e.

The Appeal Board has cited with approval the Government's discharge of ITT's student loan debts. ISCR Case No. 22-01667 at 2 (App. Bd. May 16, 2023), *citing* ISCR Case No. 21-01688 (App. Bd. Jan. 30, 2023). Applicant's federal student loans have been discharged by the Government, because they relate to ITT. I find in his favor on SOR ¶¶ 1.c, d, f, and g.

Applicant admitted two of the three consumer debt allegations. He has not mitigated the third, which he denied. That last debt is supported by the Government's credit reports. I find against Applicant on SOR ¶¶ 1.b, h, and n.

Applicant's medical debts totaling \$3,857 present a different issue. I have given little weight to the eight medical collection accounts that remain unresolved. Medical debt is unlike other types of debt. First, it is presumed that medical debt is incurred for necessary medical care and treatment as opposed to frivolous and irresponsible spending or otherwise living beyond one's means. Second, medical debt is usually unplanned, unexpected, and nondiscretionary. Third, it can add hundreds if not thousands of dollars in debt in a short period, which can be overwhelming for a debtor. Finally, Applicant's medical debts were incurred during two of his periods of unemployment. And his medical insurer was untimely in paying its share of the frequent medical costs required to treat his medical condition. In my view, having less than \$5,000 in unresolved medical collection accounts does not undermine his suitability, unlike his other unresolved debts. Accordingly, I find in favor of Applicant on (SOR ¶¶ 1.i – m, o - q).

Whole-Person Concept

Under AG ¶ 2(a), 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 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.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence 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 and 1. e: (Child Support)	Against Applicant
Subparagraphs 1.c, d, f, and g: (Student Loans)	For Applicant
Subparagraphs 1.b, h, and n: (Consumer Accounts)	Against Applicant
Subparagraphs 1.i – m, o – q: (Medical Accounts)	For Applicant

Conclusion

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

Philip J. Katauskas
Administrative Judge