



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



In the matter of:)	
)	
)	ISCR Case No. 22-00990
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2023

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July 7, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) effective on June 8, 2017.

Applicant answered the SOR on August 26, 2022, and he requested a hearing. He was initially notified of the hearing date by my email dated May 8, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 10, 2023, and the hearing was convened as scheduled on May 23, 2023. The Government offered exhibits (GE) 1-6, which were admitted into evidence without objection. The

Government's exhibit list was identified as HE I and its disclosure letter to Applicant was marked as HE II. Applicant testified but did not offer any documents into evidence. The record remained open until June 9, 2023, to allow Applicant to submit documentary evidence. He submitted exhibits (AE) A-C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 5, 2023.

Findings of Fact

In his SOR answer, Applicant admitted all the allegations, with some explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 45-year-old employee of a defense contractor. He began working at his present job in 2014. He has been married for 23 years. He has two minor children and one adult child, all whom live with him. (Tr. 6, 17-19; GE 1)

The SOR alleged Applicant owed approximately \$8,742 from his 2017 federal tax return and approximately \$1,082 from his 2018 federal tax return. He admitted these debts in his SOR answer and during his hearing testimony. (Tr. 20-21; SOR answer)

Applicant testified that he owed delinquent taxes for 2017 and 2018 because his tax preparer filed an erroneous 2017 tax return, which resulted in a higher tax bill for that year and 2018. Applicant documented reaching an agreement with the IRS on the tax amount owed and began making monthly payments of approximately \$153. He made these payments from December 2021 until June 2022, when he stopped because he was made aware of the erroneous 2017 return. He hired a tax preparation company in November 2022 to investigate the possible error and file an amended return if warranted. In the meantime, he was advised to restart making his monthly payments of \$154 to the IRS, which was to begin in July 2023. He documented his agreement with the tax preparation company and the company corroborated his settlement agreement with the IRS. (Tr. 20-22; AE A)

The SOR also alleged Applicant owed 10 delinquent accounts (debt consolidation loan, credit cards, and consumer debts) totaling approximately \$39,000. The debts are established by credit reports from August 2021, March 2022, October 2022, and May 2023; Appellant's SOR admissions; and his hearing testimony. (SOR ¶¶ 1.c – 1.l). (Tr. 27; GE 3-6; SOR answer)

Applicant admitted all the SOR debts during his testimony. He also admitted that he has not made any payments toward any of the debts as of the date of the hearing. He admitted living beyond his means. He substantiated that one debt was paid (SOR ¶ 1.e) through the enforcement of a court-ordered garnishment in 2022 for a debt where the creditor had obtained a judgment. Applicant did not voluntarily contribute to the payment of this debt. All the remaining debts remain unresolved. (Tr. 27, 29-30, 32-38, 47, 51; GE 5-6)

Applicant testified that he was in the process of consulting with a debt relief company (DRC) about his debts. Post-hearing, a representative from the DRC provided a letter stating that it was going to work with Applicant to help resolve his credit issues by removing negative entries from his credit report. There is no information in the letter detailing a plan to pay Applicant's delinquent debts. (Tr. 25-26, 44; AE C)

Applicant did not provide a formalized budget, but he testified that his monthly "take-home pay" is about \$3,700 and his wife's is about \$2,000. He stated that he barely covers his monthly expenses. His testimony revealed that he is currently two months behind on making his two vehicle payments. (Since this information was not alleged in the SOR, I will use it only as it pertains to applicability of any mitigating conditions and in applying the whole-person factors) He also stated that he has approximately \$36,000 in his retirement account. (Tr. 40-41, 44-46)

Applicant's SOR answer related that his financial problems started when his wife "got COVID-19 and lost her job." He did not provide a date when this occurred. He later testified that his wife started working again in June 2022 and continues to do so. He did not pay or set up payment plans for any of the SOR debts after his wife began working again. (Tr. 30-31; SOR answer)

Policies

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 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, these guidelines are applied 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(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;

- (c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant accumulated numerous delinquent debts, which remain unpaid or unresolved. He also admitted owing federal taxes for 2017 and 2018. I find all of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are recent and he admitted that he has not paid or resolved them. He failed to produce evidence showing that recurrence of his financial problems is unlikely. On the contrary he is now delinquent paying his two car loans. AG ¶ 20(a) is not applicable.

While Applicant's wife unemployment due to the pandemic is a condition beyond his control, however, by failing to address his debts he has not acted responsibly. He admittedly was living beyond his means, and the only SOR debt paid was done through an involuntary garnishment. AG ¶ 20(b) is partially applicable.

Aside from his contact with a DRC to help him remove items from his credit report and his hiring of a tax firm to assist with his tax issues, Applicant did not present

evidence of financial counseling. He failed to establish good-faith efforts to resolve his debts. The payment from the garnishment action is not a good-faith payment. Given the unpaid status of his debts and his new past-due debts, Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply. Applicant acted promptly to address his tax issues and arranged monthly payments to the IRS beginning in December 2021. He continued making those payments until he was advised his 2017 tax return may contain an error. While that issue is being considered, Applicant is scheduled to begin monthly payments again. SOR ¶¶ 1.a-1.b are being resolved. AG ¶ 20(e) applies to those allegations.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's his wife's unemployment due to the pandemic, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts and he has accumulated new delinquent debt since the SOR was issued. He has not established a meaningful track record of financial responsibility, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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.b:	For Applicant
Subparagraphs: 1.c-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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge