



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



In the matter of:)	
)	
)	ISCR Case No. 22-01624
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

09/06/2023

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 November 21, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on March 13, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on April 28, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 7, 2023, and he did not respond within the deadline. The case was assigned to me on August 26, 2023. The Government exhibits included in the FORM, marked as Items 1 through 7, are admitted in evidence without objection.

Findings of Fact

Applicant is a 27-year-old employee of a government contractor for whom he has worked since July 2020. He earned a high school diploma in June 2014 and has taken some undergraduate courses but has not earned a degree or certificate. He is twice divorced, having been married for three months in 2016 and for nine months in 2017. He remarried in January 2018. He has three children and a stepchild. He served with the Navy from 2014 until 2019, when he earned an honorable discharge. (Items 3, 7)

In the SOR, the Government alleged Applicant's six delinquent debts totaling approximately \$56,000 (SOR ¶¶ 1.a through 1.f). These delinquencies consist of car loans (SOR ¶¶ 1.a and 1.e), unpaid rental obligations (SOR ¶ 1.b), a cable debt (SOR ¶ 1.c), unpaid tuition (SOR ¶ 1.d), and a personal loan (SOR ¶ 1.f). The car loans comprise about \$53,000 of the \$56,000 total SOR indebtedness. He admitted the SOR allegations with additional comments. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's credit reports. The SOR debts became delinquent between 2018 and 2021. (Items 3-7)

In Applicant's March 2023 response to the SOR, he claimed that he satisfied the debts in SOR ¶¶ 1.c, 1.d., and 1.f. on unspecified dates. He claimed he is making payments on the debt in SOR ¶ 1.b. He further claimed that the car loan in SOR ¶ 1.a is "closed," and that he will attempt to make payment arrangements on the car loan in SOR ¶ 1.e. He failed to provide any documentary corroboration that he contacted the lenders, set up any payment plans for his SOR debts, or paid any of the accounts. Contrary to department counsel's assertion that Item 4 provides proof that there is no balance on the debts in SOR ¶¶ 1.a and 1.c, I find that Item does not support her statement. Applicant did not respond to the FORM, so more recent information about his finances is not available. Given the lack of corroborating evidence, I find that the SOR debts remain unresolved. (Items 3-7)

Applicant became delinquent on the SOR debts because he borrowed more money than he could afford to repay. While he did not explicitly offer his divorces as a basis for his financial issues, they presumably played a role. He claimed that he earns enough income each month to pay his financial obligations. The evidence shows that he has resolved other delinquent accounts in the past, but it also shows that he is behind on four debts that were not included in the SOR. He provided no evidence that he has undergone financial counseling. (Items 4, 7)

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 within DOD 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 has six delinquent debts totaling about \$56,000, many of which are several years old. The above disqualifying conditions are raised.

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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial delinquencies are recent and ongoing. He has not provided sufficient evidence that he has resolved or is resolving his SOR debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts, but he has not. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). He has additional debts that he is behind on that were not listed in the SOR. He has not established a track record of financial responsibility. AG ¶ 20(a) does not apply.

Applicant's delinquencies were caused by overspending and his divorces also likely had an impact. His overspending was not beyond his control. His divorces can be

seen as being beyond his control. Regardless, because he has not provided sufficient evidence that he has attempted to resolve his debts, he has not shown that he acted responsibly under the circumstances with respect to these debts. AG ¶ 20(b) does not apply. The lack of evidence of resolution of his SOR debts also means that AG ¶ 20(d) does not apply. He failed to provide sufficient evidence that any of the mitigating conditions apply.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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 concern.

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.f:	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