



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



In the matter of:)
)
) ISCR Case No. 22-02282
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, 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 March 8, 2023, 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 31, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on May 1, 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 17, 2023, and he did not respond within the deadline. The case was assigned to me on August 29, 2023. The Government exhibits included in the FORM, marked as Items 1 through 8, are admitted in evidence without objection.

Findings of Fact

Applicant is a 46-year-old employee of a government contractor for whom he has worked since February 2022. He earned a bachelor's degree in July 2014. He married in 1997 and divorced in May 2016. He has two children, ages 25 and 18. He served with the Army from 1995 until 2005, earning an honorable discharge. (Items 3, 4)

In the SOR, the Government alleged Applicant's two delinquent debts totaling approximately \$29,000. These delinquencies consist of a car loan (SOR ¶ 1.a) and a credit card (SOR ¶ 1.b). The car loan comprises about \$26,000 of the \$29,000 total SOR indebtedness. He admitted the SOR allegation in SOR ¶ 1.a with additional comments but denied the allegation in SOR ¶ 1.b, because he claimed to have a payment arrangement with the creditor. His admission is adopted as a finding of fact. Despite his denial, both SOR allegations are established through his admission and the Government's credit reports. (Items 2-8)

The delinquent car loan for approximately \$26,212 listed in SOR ¶ 1.a has not been resolved. Applicant purchased a vehicle in about February 2017, and he opened this account to finance the purchase. The last payment date on the account was in April 2018. In his response to the SOR, he provided a letter from the creditor acknowledging that it had received a dispute from a company purporting to act on his behalf. The letter from the creditor stated that the dispute letter did not contain substantive evidence, did not claim a specific dispute, and contained language commonly used by "purveyors of fraudulent credit repair schemes." Applicant has not provided any other evidence of a dispute or the basis for a dispute. He failed to provide any documentary corroboration that he set up a payment plan, or made a payment on this account. (Items 2-8)

The delinquent credit card for approximately \$3,150 listed in SOR ¶ 1.b is being resolved. Applicant became delinquent on this account between 2016 and 2018. In about September 2022, he made a payment arrangement with the creditor. He made an initial payment of about \$600 and then has made monthly payments of \$150 through March 2023. He provided documentary corroboration of these payments. Applicant began making these payments after he submitted his February 2022 Electronic Questionnaire for Investigations Processing (SF 86), after he was interviewed by a DOD investigator, and after he responded to DOD interrogatories related to his repayment of this and other debts. (Items 2, 4, 5, 7, 8)

Applicant became delinquent on the SOR debts because of his divorce and resulting child support payments, unemployment, underemployment, and financially assisting his chronically ill mother after his father passed away in 2016. In a September 2022 Personal Financial Statement, he claimed that he has about \$3,600 in surplus income each month, and that he will have an additional \$600-per-month once his child support ended in May 2023. This surplus includes his monthly take-home income of about \$4,000 that he started earning by August 2022, at the latest. He provided no evidence that he has undergone financial counseling but has hired at least two companies to help him improve his credit score. Applicant did not respond to the FORM, so more recent information about his finances is not available. (Items 2, 4, 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 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 had two delinquent debts totaling about \$29,000, that were delinquent for several years. 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;
- (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.

As he has not meaningfully addressed the far more significant debt in SOR ¶ 1.a, Applicant's financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant's delinquencies were caused by circumstances beyond his control. However, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances. He has not. According to his September 2022 Personal Financial Statement, he has a monthly surplus of about \$3,600. This surplus is based upon wages that he has earned since August 2022, at the latest. Despite this surplus, he has not provided evidence of any action to resolve the debt in SOR ¶ 1.a, save having a company send a dispute letter to the creditor that offers no basis for his dispute. He made a payment arrangement for the significantly lesser debt in SOR ¶ 1.b months after being placed on notice that his security clearance was in jeopardy. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). For these reasons, AG ¶ 20(b) and AG ¶ 20(d) do not apply.

There is insufficient evidence that Applicant is receiving financial counseling from a legitimate and credible source. At most, the evidence shows that he has engaged a company whose goal it is to have accounts removed from his credit report. Furthermore, by his failure to meaningfully address the far more substantial debt in SOR ¶ 1.a, he fails to show that the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant did not provide a basis (reasonable or otherwise) to dispute either of the SOR debts. Available evidence shows the dispute letter to the creditor in SOR ¶ 1.a did not provide a basis for a dispute. AG ¶ 20(e) 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 and 1.b:	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