



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



In the matter of:)	
)	
)	ISCR Case No. 22-02409
)	
Applicant for Security Clearance)	

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

09/06/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On December 22, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on January 3, 2023, and he elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 4, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 18, 2023. He did not submit a response. The case was assigned to me on July 17, 2023. The Government's documents, identified as Items 1 through 11 in its FORM, are admitted in evidence without objection.

Findings of Fact

Applicant admitted all the SOR allegations in his Answer. He is 51 years old. He married in 2001, divorced in 2012, and remarried in 2015. He has two children, one adult and one minor. He earned his high school diploma in 1990 and an associate degree in 1992. He previously owned a home from October 2001 to September 2012. As of his August 2020 security clearance application (SCA), he has owned his current home since October 2018. (Items 1-5)

From January 2002 to September 2019, Applicant worked as an engineering technician for a recruitment company. He left because the company was not going to renew his contract when it expired. He worked for a previous DOD contractor from September 2019 to May 2020. As of his SCA, he has worked as an engineering technician for his current employer, another DOD contractor, since May 2020. He was first granted a security clearance in approximately 2020. (Items 1-5)

The SOR alleges that Applicant filed chapter 7 bankruptcy in May 2013 and his bankruptcy was discharged in September 2013. (SOR ¶ 1.a) It also alleges that he was indebted in the amount of \$1,257 for a state tax lien entered against him in about July 2022. (SOR ¶ 1.b) It also alleges that he had four delinquent consumer debts, totaling \$23,395. (SOR ¶ 1.c-1.d, 1.f-1.g) It also alleges that he owed \$6,119 in delinquent child support. (SOR ¶ 1.e) The allegations are established by Applicant's admissions in his Answer, his SCA, his September 2020 background interview, a Defense Information System for Security (DISS) March 2021 incident report, his May 2021 response to interrogatories, bankruptcy records, a court record, and credit bureau reports from June 2021, May 2022, and May 2023. (Items 1-11)

Applicant attributes his delinquent debts and bankruptcy to his divorce, his previous minimal income, and his child support obligation. Bankruptcy records reflect that he claimed approximately \$182,000 total in liabilities. He indicated, during his background interview, that approximately \$20,000 of the credit card debt discharged in his bankruptcy was from his divorce. He also indicated that he was unable to pay seven to eight months of his monthly child support obligation beginning in approximately August 2017, due to minimal income. In 2019, when he switched jobs, he was also unable to pay several months of his child support. (Items 3-7)

Applicant stated in his 2020 SCA, during his background interview, and in his response to interrogatories, that he began working with a debt consolidation company in approximately December 2019, to resolve his debts. He stated, without corroborating documentation, that he made monthly payments of \$438 to the company, who was negotiating with his creditors on his behalf. The May 2023 credit bureau report reflects that he paid the debt in SOR ¶ 1.g, but it continues to report as delinquent the debts in SOR ¶¶ 1.c, 1.d, and 1.f. (Items 3-7, 11)

Applicant also stated, in his 2020 SCA and during his 2020 background interview, that he was resolving his delinquent child support through the garnishment of

his wages, the interception of his tax refunds, and making extra payments per paycheck toward his arrears. His April 2021 earnings statement reflects a garnishment of \$357 for child support. While his delinquent child support was reported on his previous credit bureau reports from June 2021 and May 2022, it was no longer reported on the most recent credit bureau report from May 2023. (Items 3-6, 9-11)

Despite his financial hardship, Applicant maintains that he is an exceptional employee. He looks forward to a long and successful career with his employer. His personal financial statement from May 2021 reflects a household monthly net income of \$4,900. He noted that \$409 was being garnished from his wages for child support, and he was allotting \$960 monthly to the debt consolidation company. After his monthly household expenses, to include payments toward his debts, he noted that his monthly net remainder was \$1,044. There is no information in the record about whether Applicant has received credit counseling. (Item 6)

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 access to classified information 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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 pertaining to 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (a) inability to satisfy debts; and,

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

Applicant has a history of not paying his debts, to include a \$1,257 state tax debt entered against him in about July 2022. AG ¶¶ 19(a) and 19(c) apply.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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;

(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.

Conditions beyond Applicant's control contributed to his delinquent debts. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under the circumstances. He paid his delinquent child support in SOR ¶ 1.e and the debt in SOR ¶ 1.g. I find those allegations in his favor. However, he failed to provide documentation to corroborate his claims that he was paying the debt resolution company to resolve his remaining delinquent debts, to include the state tax lien. The debts in SOR ¶¶ 1.c, 1.d, and 1.f still appear on his most recent credit report. There is no indication that he has received credit counseling. In light of his chapter 7 bankruptcy from 2013, I find that Applicant's ongoing financial problems continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are not established.

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 guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge