



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



In the matter of:)	
)	
)	ISCR Case No. 22-01326
)	
Applicant for Security Clearance)	

Appearances

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

09/21/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 27, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 within the DOD on June 8, 2017.

Applicant answered the SOR on July 27, 2022, and requested a hearing before an administrative judge. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 3, 2023. I convened the hearing as scheduled on September 6, 2023. The Government offered

exhibits (GE) 1 through 5. Applicant did not offer any documentary evidence. There were no objections to any of the exhibits and all were admitted into evidence. DOHA received the hearing transcript on September 15, 2023.

Findings of Fact

Applicant admitted all of the allegations in SOR. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He earned a bachelor's degree in 2014. He married in 2014 and has two children, ages seven and four. He has worked for his present employer, a federal contractor, since 2018. (Tr. 17-19, 32)

Applicant was self-employed from 2007 to 2014 while attending college. He worked at various jobs that dealt with the sale of real estate, such as a notary support specialist, a processor, and a mortgage counselor. In July 2014, he decided to become a real estate investor and would purchase property and resell it at a profit. He learned this was a very competitive career, and he was unable to maintain a stable income. He began falling behind on his financial obligations and used credit to help pay his bills. In June 2016, he decided to become a real estate agent to obtain financial stability. He was licensed in three jurisdictions. He continued to fall behind in his financial obligations. He worked part-time jobs to pay his bills. He was unable to live off the income he was earning. Applicant testified that while experiencing financial hardship, he reached out to his creditors to resolve his debts, but he was unable to make the payments they proposed. (Tr. 22-31; GE 2; Answer to SOR)

In 2017, Applicant decided to change careers and go into information technology (IT). He worked part-time at a small media company, Apple, and Instacart. He was able to continue to work part-time after becoming a full-time employee with his present employer in 2018 but in 2019 he was no longer able to maintain his part-time jobs due to the demands of his full-time work schedule. (Tr. 18-30)

Applicant testified that his wife worked temporary jobs for a period but did not work for periods when she was pregnant and after their children were born. She presently works for a company as a temporary employee and anticipates being hired in a permanent position, which would increase her income. (Tr. 18-21, 28-29)

During Applicant's background investigation with a government investigator in January 2022, he stated that in May 2019 he hired a credit repair company and some of his debts were removed, and Applicant did not have any further obligation toward them. He also said some were charged-off and he had no further obligation to the creditor. He testified that he also received some financial counseling from the credit repair company. (Tr. 55-57; GE 2)

Applicant explained that he and his wife reduced their spending and moved so they would pay less for rent but are still living paycheck to paycheck. His goal is to complete certifications in his field that will allow him to advance in his career and potentially increase his income. He hopes that once his income increases, he will be able to address his delinquent debts. He acknowledges that he is responsible for the debts and wants to repay them. He said he would need to double his current income to resolve his delinquent debts. (Tr. 27-31, 41-49)

Applicant testified that he continues to struggle financially and often at the end of the month he does not have sufficient income to pay all of his bills. He and his wife share a vehicle. His mother-in-law provides day care for the children. They have no savings. (Tr. 30-31)

The SOR alleges six delinquent debts. During Applicant's interview with a government investigator in January 2022, he explained the debts in SOR ¶¶ 1.a (\$17,723) and 1.d (\$5,590) are lines of credit with the same creditor. He was unable to negotiate a settlement with the creditor. The debts in SOR ¶¶ 1.b (\$9,870), 1.c (\$5,603) and 1.e (\$9,371) are credit-card accounts. Applicant testified that the debt in SOR ¶ 1.f is a charged-off student loan (\$25,000). He told the investigator he believed that he was no longer responsible for it as it had been removed from his credit report and charged-off. At his hearing, he acknowledged it was likely held by a third-party collector. Applicant testified that none of these SOR delinquent debts are resolved or paid. He said he intends to repay them when he is able. (Tr. 41, 45, 51; GE 2)

Applicant's current annual income was approximately \$60,000 in 2018 and has incrementally increased to approximately \$72,000 for this year. He earns about \$3,000 to \$5,000 from part-time jobs. His wife began working full-time three months ago and earns about \$30,000 annually. They have no investments, except his pension to which he contributes. They live within their means and have no new debts. Applicant owes approximately \$87,000 for student loans that are deferred. His wife owes approximately \$30,000 for student loans that are deferred. They have applied for income-based repayment plans. (Tr. 18-21, 34-40, 49-55)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 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

The security concern relating to the guideline 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. 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 provides conditions that could raise security concerns. The following are potentially applicable:

- (b) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has approximately \$73,157 in delinquent debt that he is unable to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant began experiencing financial difficulties in about 2016 when he decided to become an entrepreneur in the real estate market, first buying and selling real estate and then as an agent. He was unable to keep up with his financial obligations and used lines of credit and credit cards that he was unable to repay. He has not paid, resolved, or settled any of the delinquent debts alleged in the SOR. His debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant chose to enter the real estate business attempting to make a profit buying and selling property and then as a real estate agent. He was unsuccessful but it was a personal choice he made to participate in a highly competitive career. This was within his control. He used credit cards and lines of credit when he was unable to meet his financial obligations. This was also within his control. Applicant is unable to pay his creditors. Although he testified that he intends to repay his creditors in the future when he is able, he does not have a realistic plan at this point. AG ¶¶ 20(b) and 20(d) do not apply. Applicant stated he received some financial counseling from the credit repair company with whom he worked. However, there are no clear indications that his financial problems are being resolved or under control. AG ¶ 20(c) does not 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 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 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. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed 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-1.f:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge