



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



In the matter of:)
)
) ISCR Case No. 23-00149
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

10/02/2023

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 29, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 14, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on May 10, 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 19, 2023, and provided a one-page monthly budget that I have marked as Applicant Exhibit (AE) A. The case was assigned to me on September 22, 2023. The Government exhibits included in the FORM, marked as Items 1-5, and AE A are admitted in evidence without objection.

Findings of Fact

Applicant is a 38-year-old employee of a government contractor for whom he has worked since July 2021. He earned an associate degree in April 2018. He has been married since 2007 and has no children. He served on active duty with the Army from 2002 until April 2015, when he earned an honorable discharge. He has served on active reserve duty with the Army National Guard since April 2015. (Items 2, 3)

In the SOR, the Government alleged Applicant's five delinquent debts totaling approximately \$28,000 (SOR ¶¶ 1.a through 1.e). Other than the debt in SOR ¶ 1.e, which appears to be a cable or internet account, the evidence does not specify the nature of these accounts. He admitted the SOR allegations except for the allegation in SOR ¶ 1.e, which he denied. He provided no additional information in his Answer regarding these debts, or a basis for his denial of the debt in SOR ¶ 1.e. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's credit reports. The Government's credit reports reflect that the SOR debts became delinquent between February and March 2022. (Items 1, 3-5)

Applicant became delinquent on the SOR debts because he was having a hard time adjusting to civilian life after he left the military. He was also unemployed for about four months beginning in March 2017. He acknowledged that he forgot to cancel the cable account listed in SOR ¶ 1.e, but he claimed during his April 2022 security interview, that he thought he had paid this account. During his interview, he also claimed he was not aware of the debts listed in SOR ¶¶ 1.a through 1.d, but that he would promptly investigate them. He provided no additional evidence that the accounts in SOR ¶¶ 1.a through 1.d were not his and admitted them in his Answer. (Items 1, 3-5)

The only evidence Applicant provided that he attempted to resolve the SOR debts is a monthly budget that reflects monthly payments to the creditors in SOR ¶¶ 1.a through 1.c. He did not provide any independent documentary corroboration of these monthly payments, such as bank account statements or creditor acknowledgement of payments or a payment arrangement. He provided no evidence concerning the possible resolution of the debt in SOR ¶ 1.e. As he has not provided documentary corroboration, I cannot find that his SOR debts are resolved or being resolved. He estimated that he has about \$1,767 in surplus funds at the end of each month. He provided no evidence that he has undergone financial counseling. (Items 1, 3-5; AE A)

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 multiple delinquent debts, all of which have been delinquent for about a year and a half. 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;
- (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.

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). As he has not provided this documentation, Applicant's financial delinquencies are ongoing and therefore recent. He has not provided sufficient

evidence that he has resolved or is resolving his SOR debts. He has not established a track record of financial responsibility. AG ¶ 20(a) does not apply.

Applicant's delinquencies were arguably caused by circumstances largely beyond his control. However, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances. He has not done so because he has not provided sufficient evidence of his resolution efforts. AG ¶ 20(b) does not apply. The lack of sufficient evidence of any resolution of his SOR debts also means that AG ¶ 20(d) does not apply.

Applicant's basis to dispute the debt in SOR ¶ 1.e was that he thought he had paid it. This is a reasonable basis to dispute a debt. However, he did not provide documentary evidence to substantiate the basis of the dispute, such as bank account statements or receipts. He also did not provide evidence of any actions he took to resolve the dispute. His monthly budget, which lack corroboration, does not include this debt. For these reasons, AG ¶ 20(e) does not apply. None of the mitigating conditions are applicable.

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.e:	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