



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



In the matter of:)	
)	
)	ISCR Case No. 23-00180
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant admitted all the debts alleged in the Statement of Reasons, but he provided no documented evidence of his efforts to pay or resolve them. He did not provide sufficient evidence to mitigate financial considerations security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 28, 2022. On March 6, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAS issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 25, 2023, and elected a decision by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On April 24, 2023, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. DOHA mailed the FORM to Applicant on April 25, 2023, and he received it on June 15, 2023. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM.

The case was assigned to me on October 31, 2023. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Government Items 3 through 7 are admitted into evidence without objection.

Findings of Fact

In his response to the SOR, Applicant admitted all of the debts alleged in the SOR (¶¶ 1.a through 1.i), without further explanation or information. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 31 years old. He has never married but he has an eight-year-old child. He earned a certification as a pharmacy technician in 2014. He took classes at a trade school from August 2014 to May 2015. He was employed in various jobs in the private sector from 2013 to October 2020. He was then unemployed until September 2021, when he began his current job as an engineer with his clearance sponsor. His SCA reflects no prior security clearance. (Item 2)

On his SCA, Applicant disclosed a repossessed vehicle on a car loan he cosigned with his mother, for which he owed about \$12,000. (Item 2 at 28-29) He discussed that debt, and others, in his April 2022 background interview. (Item 3) In September 2022, he was given the opportunity to provide documentation to the DCSA CAS about what he was doing about his various debts, but he did not provide any documents in his interrogatory response. (Item 4)

The SOR details 13 delinquent debts, totaling about \$36,400. With one exception (SOR ¶ 1.d), the debts are established by Applicant's admissions and by the credit bureau reports (CBRs) in the record, from March 2022, December 2022, and April 2023. (Items 5, 6, 7). The SOR debts are detailed as follows:

SOR ¶ 1.a (\$14,256) is the charged-off account relating to the repossessed car Applicant listed on his SCA. He cosigned the loan for his mother in April 2016 and she fell behind on payments. He has made no efforts to address this debt, leaving it to his mother to do so. (Items 3, 5, 6) The debt is unresolved.

SOR ¶ 1.b (\$6,678) is a charged-off auto account. Applicant cosigned a loan for a woman he was dating. He said in his interview that he recognized the mistake he made

in cosigning on the loan and would take care of the debt but provided no record of payments. (Item 3, 5, 7) The debt is unresolved.

SOR ¶¶ 1.c (\$2,197), 1.e (\$1,244), and 1.k (\$250) are federal student loans, alleged as past due. They are listed as past due on credit reports from March 2022 and December 2023 (Items 5, 6) Applicant indicated in his interrogatory response that the accounts were paid or being paid, though he provided no documentation. The accounts are listed as being in good standing in an April 2023 credit report. However, the “last payment date” is listed as being in February 2020. (Items 4, 7) Thus, it is likely that the accounts are in deferred payment status due to the COVID pandemic and not due to any action by Applicant. Applicant has not detailed any efforts to address his federal student loans.

SOR ¶ 1.d (\$1,891) is a cell phone account placed for collection. Notwithstanding Applicant’s admission to this debt in his SOR response, this account is not listed on any credit report in the record, and it is not addressed in the interrogatory response to the CAS. (Items 4-7) I conclude that this debt was included in the SOR erroneously, likely due to a clerical error. SOR ¶ 1.d is found for Applicant.

SOR ¶ 1.f (\$1,212) is a medical account placed for collection. (Item 5, 6) Applicant said that the bill relates to an ER visit in 2019. He said he was on his mother’s insurance at the time and never received a bill. This debt is unresolved.

SOR ¶¶ 1.g (\$673), 1.h (\$513) and 1.i (\$307) are retail store credit card accounts placed for collection by the issuing banks. (Items 3, 5, 6, 7) These accounts are unresolved.

SOR ¶ 1.j (\$253) is an account placed for collection by a cable or internet provider. (Item 6) The debt is unresolved.

SOR ¶ 1.l (\$6,343) is an account placed for collection by the trade school where Applicant took classes from August 2014 to May 2015. (Items 3, 5) He said he dropped out when his girlfriend became pregnant. (Item 3) This debt is unresolved.

Applicant reported in his interrogatory response that some of the debts have been or are being paid, but he provided no documentation. He provided a partial personal financial statement that suggested a net monthly income of about \$4,400 and monthly expenses of just over \$2,000, leaving a significant remainder. However, he did not list any debts that he was addressing. (Item 4) The record does not indicate that he participated in any credit counseling.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security

determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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. 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. 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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred numerous past-due debts in recent years, related to his education, car purchases, and some consumer and medical debts. The debts are established by the credit reports in the record, and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply to all SOR debts but for SOR ¶ 1.d.

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, or 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's debts are ongoing and unresolved. They continue to cast doubt on his current reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant did not establish that his debts occurred due to circumstances beyond his control. He did not establish that he has undertaken good-faith, reasonable action to address his debts, and he has not established that they are being resolved or are under control. He needs to establish a plan to resolve his debts and provide evidence of

concrete steps towards that plan including a track record of payments. He has not provided any evidence of this to date. Applicant did not establish that any Guideline F mitigating condition should apply to mitigate the security concern shown by his delinquent debts.

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(a), 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. Given the limited documentation in this case, Applicant did not provide sufficient evidence to mitigate his delinquent debts. Since Applicant requested a decision on the written record, I did not have the opportunity to question him in a hearing about the status of his SOR debts, or to better assess the reasonableness of his actions in addressing them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. This does not mean that Applicant cannot establish in the future that he is taking reasonable steps to resolve his debts, but at this time, he has not shown that he has done enough to mitigate the Guideline F security concerns arising due to his delinquent debts.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.l:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge