



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



In the matter of:)	
)	
)	ISCR Case No. 23-00118
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2023

Decision

LOUGHRAN, Edward W., 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 28, 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 July 19, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on August 21, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 1, 2023. He responded with a memorandum and seven documents that I have marked Applicant Exhibits (AE) A and A(1) through A(7) and admitted in evidence without objection. The Government exhibits included in the FORM, which also contain the documents

Applicant submitted in his response to the SOR, are admitted in evidence without objection.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since August 2021. He has a master's degree that he earned in 2012 and additional education. He is married with eight children between the ages of 14 and 24. (Items 3, 9)

Applicant has a history of financial problems, including bankruptcy filings and delinquent debt. He filed a Chapter 7 bankruptcy case in November 2014. Under Schedule D, Creditors Holding Secured Claims, the petition listed an auto loan of \$14,919 and a mortgage loan of \$282,772 (the house was valued at \$192,084). Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed accounts totaling \$148,434, but about \$80,631 of that amount were student loans, which are usually not dischargeable. There were no priority unsecured claims. His dischargeable debts were discharged in March 2015. (Items 2-5, 8, 9)

Notwithstanding the fresh start offered by the 2015 bankruptcy discharge, Applicant filed a Chapter 13 bankruptcy case in November 2018. He reported \$104,000 in income for 2016; \$110,000 for 2017; and \$92,781 year to date for 2018. He reported that he owned three vehicles and a motorcycle. The model years were 2014 or 2015, and their total value was \$59,870. Under Schedule D, Creditors Who Have Claims Secured by Property, the petition listed a mortgage loan of \$277,617 (the house was valued at \$287,000), a \$914 loan for furniture, and four vehicle loans totaling about \$89,000. Under Schedule E/F, Creditors Who Have Unsecured Claims, the petition listed \$2,649 owed to the IRS for 2013; \$1,450 owed in state taxes for 2018; \$142,732 in student loans; and \$1,990 for three credit card accounts. (Items 2-5, 7, 9)

The case was dismissed upon Applicant's request in July 2019. Applicant made payments into his plan totaling \$9,720, of which \$8,501 was disbursed, leaving a \$1,218 balance on hand. The trustee was paid \$589, and his attorney was paid \$4,950. The remainder was paid to his secured claims. No payments were made to his unsecured claims. (Items 2-5, 7, 9; AE A, A(2))

Applicant filed another Chapter 13 bankruptcy case in November 2019. He reported \$110,000 in income for 2017; \$101,920 for 2018; and \$85,698 year to date for 2019. He reported that three vehicles had been repossessed. He still owned the motorcycle for which he owed \$19,493 and another vehicle for which he owed \$14,034. Under Schedule D, Creditors Who Have Claims Secured by Property, the petition listed a mortgage loan of \$280,146 (the house was valued at \$292,000), a \$914 loan for furniture, and the two vehicle loans discussed above. Under Schedule E/F, Creditors Who Have Unsecured Claims, the petition listed \$2,662 owed to the IRS for 2013; \$142,962 in student loans; \$71,509 owed in deficiency balances for the three repossessed vehicles; a \$5,485 medical debt; and \$4,301 for five miscellaneous accounts. The IRS filed a claim of \$2,818. (Items 2-6, 9; AE A(1))

The case was dismissed upon Applicant's request in August 2021. He moved to another state and would have had to retain another attorney to refile it in his new state. He submitted a report from January 2020 that was apparently prepared by the trustee. The monthly payments into the plan were \$882. The report indicated that \$4,950 was paid to his attorney and \$310 was paid to the trustee. No payments were recorded to the claimants. Another document shows that he made payments totaling about \$16,000 into the plan while the case was open. A final accounting was not submitted, so what creditors were paid cannot be ascertained. (Items 2, 6; AE A, A(1), A(3))

The SOR alleges the three bankruptcy cases (SOR ¶¶ 1.a-1.c), deficiency balances on two auto loans for repossessed vehicles (SOR ¶¶ 1.d - \$13,991 and 1.e - \$34,780), and \$1,202 owed on a charged-off credit card account (SOR ¶ 1.f). Applicant admitted owing the debts. They are also listed on credit reports and named as creditors in the 2019 bankruptcy petition. (Items 2, 4-6)

Applicant attributed his financial problems to being the sole provider in a family with eight children. He also noted a significant drop in income in 2013, unemployment, and health issues. He bought three vehicles for his children to use, then was unable to pay for them, and they were repossessed. (Items 2, 3, 9; AE A)

Applicant resolved some debts from the bankruptcies, but he has not paid any of the three debts alleged in the SOR. The loan for his motorcycle was "paid in settlement" for less than the full balance in February 2022. He settled a \$636 debt for \$500 in May 2023, which he completed through two \$250 payments. In addition to the financial counseling courses required for his bankruptcies, he has taken classes from a noted financial expert. His plan is to use that expert's strategy of paying the smallest debts first, and then moving on to the next one. He stated that he was working on a plan to pay the \$1,202 charged-off credit card debt (SOR ¶ 1.f). (Items 4, 5; AE A, A(4)-A(7))

Applicant reported his financial issues on a Questionnaire for National Security Positions (SF 86) that he submitted in August 2022, and he discussed them during his background interview in October 2022. He reported on the SF 86 that he went on a one-to-five-day Caribbean cruise in January 2020. His most recent credit report indicates that he owes more than \$250,000 in student loans, and it is unclear whether he paid the back taxes that were reported in his bankruptcy petitions. (Items 2, 4, 5, 9)

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 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 a history of financial problems, including bankruptcy filings and delinquent debts. The above disqualifying conditions are applicable.

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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to being the sole provider in a family with eight children. He also noted a significant drop in income in 2013, unemployment, and health issues. Notwithstanding the fresh start offered by the 2015 bankruptcy discharge, Applicant filed a Chapter 13 bankruptcy case in November 2018. He reported \$104,000 in income for 2016; \$110,000 for 2017; and \$92,781 year to date for 2018. Applicant had income, but he overextended himself. He bought three vehicles for his children, then was unable to pay for them. The 2018 bankruptcy petition listed four vehicle loans totaling about \$89,000.

The second Chapter 13 bankruptcy case was voluntarily dismissed because Applicant moved to another state. Had he been able to continue with that bankruptcy, the result of this case might be different. Because his Chapter 13 bankruptcies were not completed, they had minimal effect on his debts. Applicant is credited with resolving two non-SOR debts from the bankruptcy, but he still owes a number of debts that were reported in the bankruptcies, including the three debts alleged in the SOR. He owes more than \$250,000 in student loans, and it is unclear whether he paid the back taxes that were reported in his bankruptcy petitions.

In addition to the financial counseling courses required for his bankruptcies, Applicant has taken classes from a noted financial expert. His plan is to use that expert's strategy of paying the smallest debts first, and then moving on to the next one. He stated that he was working on a plan to pay the \$1,202 charged-off credit card debt. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant does not have a track record that would enable me to trust that he will pay the remaining SOR debts. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are partially applicable. None of the other mitigating conditions are applicable. I find that financial considerations security concerns remain despite the presence of some mitigation.

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.

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 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 F:	Against Applicant
Subparagraphs 1.a-1.f:	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.

Edward W. Loughran
Administrative Judge