



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



In the matter of:)
)
) ISCR Case No. 22-01790
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2023

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 September 29, 2022, 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 October 27, 2022, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2023.

The hearing was convened as scheduled on October 4, 2023. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an email that I have marked AE E and admitted without objection, but he did not submit any additional documentary evidence.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since January 2022. He served on active duty in the U.S. military from 1995 until he retired with an honorable discharge in October 2021. He served three deployments to Iraq and one to Afghanistan. He has a 100% disability rating from the Department of Veterans Affairs. He earned a bachelor's degree in 2021. He married in 2001 and divorced in 2016. He has five children between the ages of 9 and 23. (Tr. at 18-20, 44-45, 56; GE 1; AE B)

The SOR alleges 10 delinquent debts totaling about \$83,000. Four charged-off debts totaling about \$60,000 are to the same credit union (SOR ¶¶ 1.a, 1.c, 1.d, and 1.e). There is a \$16,552 charged-off auto loan (SOR ¶ 1.b), and five miscellaneous delinquent debts totaling about \$6,284 (SOR ¶¶ 1.f-1.j). The debts are listed on a February 2022 credit report, a September 2022 credit report, or both credit reports. (GE 3, 4)

Applicant attributed his financial problems to his separation in about 2013 or 2014, followed by his contentious divorce in 2016. During the separation, he was paying to maintain households in two states. He had to pay alimony and child support, and he is supporting three of his children in college. (Tr. at 16-22, 39, 43-45; Applicant's response to SOR; GE 2; AE E)

Applicant stated that he consulted bankruptcy attorneys, but he was advised to attempt to work out amicable agreements with the creditors. He retained a credit repair company in April 2023. The company is assisting him in increasing his credit score and disputing inaccurate items on his credit report. He reported on his Questionnaire for National Security Positions (SF 86) in February 2022 that he traveled to foreign countries for tourism for between one and five days in February 2020, October 2020, and August 2021. (Tr. at 41-42; Applicant's response to SOR; GE 2; AE A)

Applicant stated that he attempted to work with the credit union holding the four debts, but "[u]fortunately, [the credit union] and [he] could not reach an amicable agreement and [they] severed ties from one another." He stated that the credit union forgave three of the debts through an IRS Form 1099-C (Cancellation of Debt), and that he included that information in his income tax returns. He did not provide copies of any 1099-Cs or any income tax returns. He expects the four debts to reach the end of the seven-year reporting period in December 2023 and will fall off his credit report. (Tr. at 22-32, 36-38, 46; Applicant's response to SOR; GE 2; AE C, D)

SOR ¶ 1.b alleges a \$16,552 charged-off auto loan. Applicant stated he cosigned an auto loan for his cousin, and she "totaled" the vehicle. He thought the debt was paid by insurance. The debt is listed by all three credit reporting agencies on the February 2022 credit report with an activity date of January 2022. The debt is not listed on any of the later credit reports. (Tr. at 32-36; Applicant's response to SOR; GE 2-4; AE C, D)

Applicant admitted owing the debts alleged in SOR ¶¶ 1.f (\$3,220) 1.g (\$1,295), 1.h (\$792), and 1.i (\$567). He was unable to work out any payment plans with the creditors. His plan is to follow his credit repair company's advice and wait until the debts fall off his credit report. (Tr. at 38-40, 49-50, 54; Applicant's response to SOR; GE 3, 4; AE C, D)

Applicant denied owing the \$410 debt to a collection company on behalf of a home security company (SOR ¶ 1.j). He stated that he had not used the alarm system since 2006. The debt was reported by Equifax on the February 2022 combined credit report, with an activity date of April 2017, and it is listed on the September 2022 Equifax credit report. He disputed the debt with Equifax. It is not listed on the October 2023 Equifax credit report. (Tr. at 40; Applicant's response to SOR; GE 3, 4; AE D)

Applicant stated that his finances are now in better shape. He pays about \$2,200 per month in child support. His annual salary is about \$129,000. His share of his military retirement pay, after what is paid to his ex-wife, is about \$2,400 per month. He receives about \$4,000 per month from the VA for his disability pay. Because of his 100% disability rating from the VA. His federal student loans were discharged. He had not yet filed his 2022 income tax returns, but returns for all previous years have been filed and all taxes paid. He stated that he served this country faithfully for more than two decades, including multiple deployments, and his financial issues would never cause him to do anything to harm this country. (Tr. at 41-48, 53-56; Applicant's response to SOR; GE 2-4; AE C-E)

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 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts and financial problems. The evidence indicates that it was initially difficult for him to pay his debts, but he reached a point where he could pay at least some of his debts, but he just chose not to. AG ¶¶ 19(a), 19(b), and 19(c) 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;
- (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.

Applicant's financial problems related to his separation, divorce, paying to maintain households in two states, alimony, and child support. His separation and divorce qualify as conditions that were largely beyond his control. To receive the full benefit of AG ¶ 20(b), he must also prove that he acted responsibly under the circumstances.

I am giving Applicant the benefit of the doubt on the \$16,552 charged-off auto loan that he cosigned for his cousin (SOR ¶ 1.b) and the disputed \$410 debt to a

collection company on behalf of a home security company (SOR ¶ 1.j). Those debts are mitigated.

Applicant has not paid any of the other SOR debts, and he does not intend to, as he is waiting for them to age off his credit report. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). He stated that three of the credit union debts were cancelled through the issuance of an IRS Form 1099-C, but he did not provide copies of the IRS forms nor of his income tax returns that would have included that information. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

I am unable to find that Applicant 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. The above mitigating conditions, individually or collectively, are insufficient to eliminate concerns about Applicant’s finances.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant’s honorable military service and particularly his four deployments to Iraq and Afghanistan. However, 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.”

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant
Subparagraph 1.j:	For 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