



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



In the matter of:)	
)	
)	ISCR Case No. 23-01210
)	
Applicant for Security Clearance)	

Appearances

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

01/10/2024

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 June 6, 2023, the Department of Defense (DOD) issued to 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 3, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on September 6, 2023. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, did not object to the Government's evidence, and did not submit documents. The Government evidence is admitted. The case was assigned to me on November 30, 2023.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.h. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He served in the military from 2008 until his honorable discharge in 2015 in the rank of E-5. He married in 2014 and divorced in 2016. He has no children. He earned a bachelor's degree in 2019. He has worked for his present employer, a federal contractor, since June 2022.

Applicant disclosed in his August 2022 security clearance application (SCA) that he experienced periods of unemployment from May 2017 to September 2017, March 2018 to May 2019, and December 2019 until October 2020. The later due to the pandemic. (Item 2)

The SOR alleges eight delinquent debts. Most appear to be credit card debts. The total delinquent amount alleged is approximately \$45,208. The debts are corroborated by Applicant's admissions in his answer, SCA, interrogatories, statement to a government investigator, and credit reports from September 2022 and August 2023. (Items 1-6)

In his SCA, Applicant disclosed the credit card debts alleged in SOR ¶¶ 1.a (\$5,460), 1.b (\$5,390), 1.c (\$1,684), 1.h (\$2,633) and presumably 1.g (he disclosed the amount owed was \$11,000, the current balance appears to be \$13,839, as alleged). For the debt alleged in SOR ¶ 1.a he said he spoke with the bank, and he planned to make monthly payments on the debt. He stated in his SCA that he was having money issues at the time and could not make the payments on the debts. He said he was living beyond his means, never learned about proper budgeting when he was growing up, and when he joined the military, he went crazy with his spending. He said he made most of his mistakes as a young military member. He said in the SCA that he had not taken action on the accounts, and they were canceled by the creditors. He planned on looking into credit counseling services that could help him. (Item 2)

Applicant was interviewed by a government investigator in November 2022. He acknowledged his delinquent debts and attributed them to his being unknowledgeable about finances, credit, and money in general. He also lived beyond his means and over-extended himself with credit cards. He allowed his financial delinquencies to linger and eventually go to collections. He told the investigator that he had contacted all of the creditors but was not in a position to make payments towards his debts. Once his financial

situation improved, he intended to contact the creditors and make payment arrangements. (Item 4)

Applicant responded to government interrogatories in April 2023. He was asked to provide information on each of the debts alleged in SOR ¶¶ 1.a through 1.h. He responded that none of the debts were paid. He had not made payment arrangements with any of the creditors and was not making any payments on any of the debts. He said the cause of his financial problems was because of his divorce and discharge from the military, which left in a bad financial situation. He said he planned on making things right and paying off his outstanding accounts. As part of his interrogatories, Applicant provided a personal financial statement, which reported he is timely paying five debts. None of them are those alleged in the SOR. (Item 3)

In Applicant's answer to the SOR, he admitted all of the debts alleged. He said he took full responsibility for the debts and intended to make things right and pay what he owed in "due time." He said he had made a payment arrangement for the debt alleged in SOR ¶ 1.d (\$723). He provided a document showing that he authorized an electronic payment of \$12.95 a month beginning in December 2022 and continuing through November 2024. He did not provide additional documents to show he is in compliance with the agreement. He also stated he hoped to fix his credit issues. No additional information or documents were provided. (Item 1)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has eight delinquent debts totaling more than \$45,000. 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;
- (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 has not resolved any of his delinquent debts. They remain current and overdue. AG ¶ 20 (a) does not apply. He attributed his financial problems to overextending himself, being unsophisticated in handling his finances, a divorce, discharge from the military, and unemployment. His divorce was in 2016 and his discharge from the military was in 2015. These factors may have been beyond his control, but it has more than seven years since these events occurred. Applicant's unemployment was beyond his control.

His overspending was within his control. Applicant has been aware that his delinquent debts were a security concern. He failed to provide sufficient evidence that he has acted responsibly regarding his debts. Although some of the factors that impacted his finances may have been beyond his control, he provided scant evidence of any actions he has taken to address them. He recently made a payment arrangement for one of his smaller debts but did not provide updated evidence to show he has complied with the arrangements. I find AG ¶ 20(b) has limited application.

There is no evidence that Applicant is receiving financial counseling or that there are clear indications that his financial problems are being resolved and under control. AG ¶ 20(c) does not apply. Without additional documents, I cannot apply AG ¶ 20(d) to the small debt Applicant indicated he is paying. There is insufficient evidence that Applicant is making good-faith efforts to repay his creditors. AG ¶ 20(d) does not apply. He has not provided evidence that he has a reasonable dispute about the legitimacy of any of the debts alleged. AG ¶ 20(e) 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.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with 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 raised 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

Subparagraph 1.a-1.h: 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