



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



In the matter of:)	
)	
)	ISCR Case No. 23-00102
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 14, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 9, 2023, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 27, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 21, 2023. His response was due on October 21, 2023, but he did not submit one. The case was assigned to me on November 8, 2023.

The Government's documents, identified as Items 1 through 8 in its FORM, are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations except for SOR ¶ 1.b, which he denied. He is 49 years old, married, and he has an adult child. He graduated from high school in 1993 and attended various colleges from 1993 to 1995, in 2004, and from 2006 to 2009, but he did not earn a degree. He received an aircraft maintenance technician diploma in 1997, and he received numerous technical certifications. He owned his first home from July 2004 to February 2014, and he has since owned his second home. (Items 1-3, 7)

Applicant has worked in the information technology field since 1997. He worked for a DOD contractor overseas from December 2010 to July 2014, and he worked for another DOD contractor from July 2021 to at least the date of his May 2022 security clearance application (SCA). He was self-employed from August 2014 to at least May 2022, and he was unemployed from around March 2020 to October 2020. Since March 2023, he has worked as an independent contractor network consultant for his employer, a DOD contractor. He was first granted a security clearance in 2010. (Items 1-3, 7-8)

The SOR alleges that Applicant had eight delinquent consumer debts totaling \$187,376 (SOR ¶¶ 1.a-1.c, 1.e-1.i) and a medical account in collection for \$3,043 (SOR ¶ 1.d). The allegations are established by Applicant's admissions in his Answer, May 2022 security clearance application (SCA), June 2022 background interview with an authorized DOD investigator, November 2022 response to interrogatories, and credit bureau reports from June 2022, November 2022, February 2023, and July 2023. (Items 1-8)

Applicant attributed his delinquent debts to his failed house-flipping business he started with a business partner. He obtained large personal loans from 2018 to 2020 to fund the business. When he elected not to close on a property after deciding it was not a worthwhile project because the property had a lien, he utilized the loan money to pay his credit cards. He was financially overextended. (Items 2-3, 7-8)

Applicant stated that the COVID-19 pandemic halted any further business, and he was furloughed by his employer, a private company, in March 2020. He stated in his Answer that his business ultimately failed when his partner became ill and subsequently passed away. He used the equity from the sale of his first home to settle some of his debts upon obtaining employment. Although he considered resolving his debts through a debt consolidation plan in approximately September 2019, as well as other debt relief programs, he did not finalize any of those options. With his current employment as an independent contractor, he stated in his response to interrogatories that he is required "to pay for all expenses traveling and working to be reimbursed 30 days later." He consequently has to "be careful with my finances and make payments that are manageable for my debts." (Items 2-3, 7-8)

Applicant stated in his Answer that he had monthly payment arrangements of \$277, \$50, \$50, and \$243, respectively, to resolve the debts in SOR ¶¶ 1.a, 1.e, 1.f, and 1.g, which total \$113,351. He made the following payments in accordance with these arrangements: for SOR ¶ 1.a, he made a \$100 payment in May 2023 and five monthly payments of \$277 from June 2023 to October 2023; for SOR ¶ 1.e, he made a \$50 payment in May 2023; for SOR ¶ 1.f, he made a \$50 payment in May 2023; and for SOR ¶ 1.g, he made a \$116 payment in January 2019 and a \$243 payment in May 2023. He intended to increase his monthly payments for SOR ¶¶ 1.e, 1.f, and 1.g once he had the financial means to do so. (Items 2, 7]

Applicant also stated in his Answer that he paid the debts in SOR ¶¶ 1.b and 1.d, but he did not provide documentation to corroborate his claim. He stated that he was awaiting correspondence from the creditor for SOR ¶ 1.b, but he did not provide proof of payment. Although he provided a copy of a return receipt for correspondence that he mailed to an attorney for the creditor in SOR ¶ 1.d, such documentation does not reflect that he paid this debt. He intended to continue resolving these debts. (Items 2, 7)

Applicant also stated in his Answer that he contacted the creditor for SOR ¶ 1.c, and that he was in the process of negotiating a payment arrangement to resolve this debt. He intended to resolve this debt. He also stated that he contacted the creditor for SOR ¶ 1.i to negotiate a payment arrangement, but that he had not received a response. He intended to continue trying to resolve this debt. (Item 2)

Applicant also stated in his Answer that he had been paying the debt in SOR ¶ 1.h. He acknowledged that he did not have documentation to corroborate his claim of payment. He intended to continue resolving this debt. (Item 2)

Applicant's annual salary as of his Answer was \$115,000. In November 2022, he estimated that he and his spouse's combined net monthly income was \$10,600, and their monthly net remainder after expenses, which included some of the SOR debts, was \$3,546. He signed a statement of intent to "always pay my debts to maintain financial stability," and that any failure to do so would result in the automatic revocation of his clearance. There is no evidence in the record that Applicant received any financial counseling. He stated that he takes his security clearance responsibilities seriously, no matter his financial status. (Items 2, 7)

Policies

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 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(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. 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 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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered as relevant AG ¶ 19(a), an “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant has a history of not paying his debts. AG ¶¶ 19(a) and 19(c) apply.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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.

Conditions beyond Applicant’s control contributed to his delinquent debts. However, Applicant failed to show that he acted responsibly under his circumstances. He failed to show a track record of consistent payments, in accordance with his payment arrangements, for the debts in SOR ¶¶ 1.a, 1.e, 1.f, and 1.g. He did not provide documentation to corroborate his claims of payment for the debts in SOR ¶¶ 1.b, 1.d, and 1.h. He failed to provide proof of his efforts to resolve the debts in SOR ¶¶ 1.c and 1.i. There is no evidence that he has received credit counseling. There are not clear indications that his financial problems are being resolved or are under control. I find that Applicant’s ongoing financial problems continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not established.

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 have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that 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.i:	Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge