



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 23-00765 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Patricia Lynch-Epps, 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 April 10, 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 16, 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 June 29, 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 July 19, 2023. His response was due on August 18, 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

Applicant admitted all the SOR allegations in his Answer. He is 50 years old, married, and he has an adult child. He served honorably in the U.S. military from January 1992 until he retired in February 2018. He has since worked as a senior logistics analyst for his employer, a DOD contractor. He was first granted a security clearance while he served in the U.S. military. (Answer; Items 1, 2, 4)

The SOR alleges that Applicant had three delinquent consumer debts: a \$31,539 charged-off credit card (SOR ¶ 1.a); a credit card in collection for \$970 (SOR ¶ 1.b); and a store credit card in collection for \$364 (SOR ¶ 1.c). The allegations are established by Applicant's admissions in his Answer, his May 2022 background interview with an authorized DOD investigator, and a credit bureau report from April 2022. (Items 1, 2, 8)

Applicant indicated during his background interview that he did not realize how delinquent his debts had become. He acknowledged that he procrastinated paying his debts, but he planned to pull a copy of his credit bureau report and make payment arrangements for his delinquent accounts no later than May 2022. In his Answer, he stated that: (1) he would settle the debt in SOR ¶ 1.a by the end of May 2023; (2) the debt in SOR ¶ 1.b was no longer delinquent and carried a balance of \$700; and (3) he paid the debt in SOR ¶ 1.c in May 2023. He did not provide documentation to corroborate his claims. Credit bureau reports from November 2022 and January 2023 do not reflect any delinquent debts. The 2023 credit bureau report also reflects that three accounts with the same original creditor as that of SOR ¶ 1.b were current. (Items 2, 5-7)

Applicant estimated during his background interview that his net monthly salary, which included \$2,792 in military retirement pay, was \$7,334, and his monthly net remainder after expenses was \$3,117. He also indicated that he had \$15,000 in his bank savings account. He had not received any financial counseling. (Item 5)

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(b), an “unwillingness to satisfy debts regardless of the ability to do so,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant has a history of not paying his debts, despite having the financial means to do so. AG ¶¶ 19(b) 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 did not contribute to his delinquent debts, as Applicant indicated during his background interview that he did not realize how delinquent his debts had become and he acknowledged that he procrastinated paying them. The 2023 credit bureau report, which reflects that three accounts with the same original creditor as that of SOR ¶ 1.b were current, corroborates Applicant’s claim that this debt is no longer delinquent. I find that allegation in Applicant’s favor.

However, Applicant failed to provide proof that he settled or otherwise resolved the significant debt in SOR ¶ 1.a, or that he paid the debt in SOR ¶ 1.c. Although these debts are no longer reported on his most recent credit reports, they were reported on the April 2022 credit bureau report. He has the financial means to resolve these debts, but he failed to provide documentation reflecting his efforts to do so. 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 for SOR ¶¶ 1.a and 1.c.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | 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