



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



In the matter of:)	
)	
)	ISCR Case No. 22-01536
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2024

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on March 23, 2021. On February 22, 2023, the Defense of Defense Consolidated Adjudication Facility (DOD CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on March 15, 2023, and elected to have a hearing. (Answer) The case was assigned to me on May 5, 2023. On September 22, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 27, 2023.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the September 18, 2023 exchange of emails between Applicant, Department Counsel (DC), and myself regarding Applicant’s waiver of the 15-day hearing notice requirement as Hearing Exhibit (HE) I; the September 19, 2023 case management order as HE II (see also transcript (Tr. 6-7); DC’s April 11, 2023 discovery letter as HE III; and DC’s exhibit list as HE IV. Government Exhibits (GE) 1-8 were admitted without objection,

and Applicant testified. DOHA received the transcript on October 6, 2023, and the record closed.

Findings of Fact

Applicant is 64 years old and has three sons, ages 23, 20, and 16. He married his first wife in 1980, they divorced in 1981, and he has been married to his second wife since 1999. He entered the United States in 1977 on a student visa but did not earn a college degree. He took online courses in 2016 and 2017 and has completed approximately 64 credits. From 2009 to 2017, he worked periodically as a linguist for the U.S. Army and U.S. Navy. He worked in Iraq (April 2009 to October 2010), Guantanamo Bay, Cuba (January 2014 to July 2015 and February 2016 to July 2017), and Djibouti, Africa (October 2017 to 2019). He previously held a security clearance in 2009 and is currently seeking to have his security clearance reinstated. (GE 1-2; Tr. 11-13, 15-16, 31-32, 34-37)

The SOR alleged 11 delinquent debts, including four judgments, totaling \$75,885. Applicant admitted all the allegations, except SOR ¶ 1.k (\$557). These debts appear in Applicant's credit bureau reports (CBRs). (Answer; GE 2-8)

The debts alleged in the SOR were opened between 2015 and 2020 and became delinquent between 2018 and 2022. All but one of the alleged debts are credit cards, personal-bank loans, or a line of credit. Applicant testified he had not made any payments toward the alleged debts, nor has he contacted his creditors. However, he intends to resolve them in the future when he has more income and the ability to make payments. At the time of the hearing, his mortgage of approximately \$280,000 was in forbearance, and his last full payment was made in April 2021. Additionally, he testified he has new unalleged delinquent debts, including a \$2,000 credit card he opened in December 2022 that is approximately four to five months past due. He is also a month behind on his two car leases. These debts were not alleged in the SOR, and they are not considered as disqualifying; however, they may be considered in determining the applicability of mitigating conditions and in my whole person analysis. (GE 2 at 7-9; GE 3-7; Tr. 37-47, 52-54, 62-70, 78-81)

SOR ¶ 1.k (\$557) is the only medical debt alleged in the SOR. It became delinquent in approximately 2021. According to Applicant, the debt, a 2015 surgery-related deductible, was personally forgiven by his physician in 2016. Applicant's only communications with the physician were over the phone, and he last communicated with him in 2016. Applicant does not have documentation to support his claim the debt was forgiven or resolved. (GE 3 at 7; Tr. 47-52)

Applicant entered a debt consolidation plan in October 2017 to consolidate his bills. Monthly payments of \$1,100 were withdrawn electronically from his bank account for eight or nine months. The debt consolidation company retained \$5,500 of the approximately \$8,800 to \$9,900 he paid it. The company resolved two small accounts, not alleged in the SOR, and Applicant resolved three additional unalleged accounts after he discontinued payments to the company. He did not provide proof of these payments. He has made no additional payments toward his debts since making these payments. (Answer; Tr. 53-63)

Applicant was unemployed during the following periods: December 2010 to December 2013 (medical reasons and worked part time for his brother); July 2015 to January 2016 (medical reasons and supported by \$39,000 medical policy); July 2017 to October 2017 (changed employers and supported himself with savings and unemployment benefits); and June 2019 to present (left by mutual agreement). (Answer; GE 1-2, 8; Tr. 36, 50)

As noted above, Applicant has been unemployed since June 2019. He has been unable to find positions with government contractors and civilian employers. He testified that after leaving his last employment in 2019, he received unemployment benefits of \$350 for 14 weeks. He previously disclosed he received unemployment benefits of \$650 weekly or \$2,600 monthly. Starting in 2020, he received COVID-19 benefits for approximately one year. His wife received unemployment benefits of \$320 weekly or \$1,280 monthly starting in March 2021. She started working in September 2022 earning approximately \$1,500 net monthly. His oldest son left college early, and he provides financial support to their family. Since July 2023, he has received \$1,511 monthly in Social Security disability due to an injury he received in Africa (he received Social Security benefits of \$1,100 monthly from June 2022 to July 2023). One of his brothers also provides him with financial support. Applicant owes him approximately \$27,000, and he has not made any payments to his brother. He also borrowed \$1,500 from a cousin and used part of his 2022 income tax refund of \$5,000 to repay him. The unalleged personal loans from family members are not alleged in the SOR, and they are not considered as disqualifying; however, they may be considered in determining the applicability of mitigating conditions and in my whole person analysis. (GE 8; Tr. 24-33, 69, 76)

Applicant does not follow a written budget. At the time of the hearing, he had \$482 in his savings account, no money in his checking account, and no money in a retirement savings account. In 2021, he leased a brand-new vehicle with a \$465 monthly payment, and in 2022, he leased a brand-new vehicle with a \$306 monthly payment. He was aware of his financial issues when he leased both vehicles. In 2010, during a previous investigation, he had \$18,000 in delinquent debt, and he resolved it through a consolidation firm. (Tr. 77, 79-82, 85)

In Applicant's Answer to the SOR, he included a personal statement and a letter of recommendation regarding the circumstances related to his leaving his former employer in June 2019 by mutual agreement. Applicant asserted and was supported by the letter of recommendation, that he was discriminated against by his supervisor, and it affected his employment. (Answer)

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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

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

Applicant's financial issues are current, ongoing, and substantial. None of the alleged debts have been resolved, nor has he established payment arrangements or contacted his creditors in many years. He also has limited financial resources to make monthly payments. He has additional unalleged personal loans from his brother totaling approximately \$27,000, a new delinquent credit card debt of \$2,000, has not made a full mortgage payment since the spring of 2021, and is having difficulty making timely payments toward his leased vehicles. He leased these brand-new vehicles in 2021 and 2022, despite having financial problems concurrent with the leases.

I considered Applicant's history of unemployment and medical issues as contributing factors to his financial problems. However, he failed to provide evidence that he has acted responsibly during the past four years to resolve his delinquent debts.

Instead, he made choices, such as leasing brand-new vehicles, which only contributed to his monthly financial obligations.

Overall, Applicant has not demonstrated he has acted responsibly under the circumstances to address and resolve, or attempt to resolve, his delinquent debts in a timely manner. Nor has he made a good-faith effort to repay his creditors, and he has only increased his debt in the last few years. Mitigation under AG ¶¶ 20(a), 20(b), and 20(d) was 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 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. Applicant failed to resolve his delinquent debts. Overall, he has not demonstrated the actions of a responsible, reliable, and trustworthy person. I conclude he did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.l:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge