



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



In the matter of:)	
)	
)	ISCR Case No. 23-00134
)	
Applicant for Security Clearance)	

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2024

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 3, 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 March 1, 2023, and requested a hearing before an administrative judge. The case was assigned to me on November 7, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on November 16, 2023, scheduling the matter for a video conference hearing on December 6, 2023.

I convened the hearing as scheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 6 without objection. Applicant testified and submitted Applicant Exhibit (AE) A, which I admitted in evidence without objection. At Applicant's request, I

kept the record open until December 20, 2023, to enable him to submit additional documentation. He timely submitted documents, which I marked collectively as AE B and admitted without objection. DOHA received the hearing transcript (Tr.) on December 18, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. He is 45 years old. He has never married and he does not have children. (Tr. 7, 30, 32; GE 1)

Applicant graduated from high school in 1996. He has worked as a logistics coordinator for his employer, a defense contractor, since July 2008. He does not recall when he was granted a security clearance. (Tr. 7-9, 30-31; GE 1)

The SOR alleged Applicant had five delinquent consumer debts totaling \$40,875 (SOR ¶¶ 1.a-1.e) and a \$96 delinquent medical debt (SOR ¶ 1.f). The SOR allegations are established by his admissions in his Answer; his September 2022 interview with an authorized DoD background investigator; and credit bureau reports (CBR) from June 2022, January 2023, and November 2023. (GE 2-6)

Applicant attributes his delinquent debts primarily to minimal income. He also incurred additional expenses when he moved in July 2023. He acknowledged that his financial irresponsibility also contributed to his delinquencies. (Tr. 37, 52, 55-59, 67-69; GE 2; AE)

SOR ¶ 1.a is a \$10,6843 charged-off auto loan. In October 2019, Applicant was in a no-fault car accident that totaled his car. He believed the insurance company of the at-fault individual was responsible for paying the remaining balance on the loan, but it only paid half. In approximately February 2023, he contacted the creditor to try to settle this debt. He intends to resolve it. (Tr. 32-35, 60-61; GE 2-4, 6)

SOR ¶ 1.b is a \$2,256 charged-off credit card. Applicant obtained this card during the COVID-19 pandemic. He intends to contact the creditor to try to settle this debt. This debt is not resolved. (Tr. 35-39, 61-62; GE 2, 4, 6)

SOR ¶¶ 1.c and 1.d are charged-off credit cards with the same creditor, in the amounts of \$900 and \$629, respectively. He contacted the creditor and settled the debts for a total of \$900 and he paid \$540 and \$377, respectively, in September 2022. Both 2023 CBRs reflect that these debts are settled and paid. (Tr. 39-40, 62; GE 2-4, 6; AE A)

SOR ¶ 1.e is an auto loan past due in the amount of \$7,806 on a \$26,247 total balance. This loan is for Applicant's current car. He stated that since approximately early 2023, he makes his monthly car payment of \$673 at the beginning of every month and then pays an additional \$350 in the middle of the month for the past due balance. He provided documentation reflecting that he has had a payment arrangement with the creditor since June 2022, scheduled to continue through November 2024, consisting of automatic deductions from his bank account of \$350 biweekly. He did not, however,

provide documentation to corroborate his payments. (Tr. 40-44, 62-65, 67; GE 2-4, 6; AE B)

SOR ¶ 1.f is a \$96 medical debt in collection. Applicant was unaware of this debt. He intends to look into it. (Tr. 44-46, 70-71; GE 3)

Applicant earned approximately \$30,000 annually when he first started working for his employer. His income incrementally increased and he has been earning approximately \$48,000 annually since around 2021. After paying his monthly expenses, to include \$3,300 in rent, he does not have much of a monthly net remainder. He stated that he utilizes a budget to track his income and expenses. He estimated a balance of \$100 in his combined checking and savings accounts and \$12,000 in his retirement savings account. He does not have any other delinquent debts. He has not received credit counseling. He anticipated receiving a pay raise and he applied for part-time jobs. He intends to resolve his debts so that he could purchase a home. (Tr. 31-32, 51-59, 65-69)

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 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(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 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 Exec. Or. 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* Exec. Or. 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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of not paying his debts. AG ¶¶ 19(a) and 19(c) are established.

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; 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 debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He paid the debts in SOR ¶¶ 1.c and 1.d, so I find those debts in his favor. He did not provide documentation to corroborate any of his claims of payment for SOR ¶ 1.e, and he has yet to address SOR ¶¶ 1.a, 1.b, and 1.f. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply to SOR ¶¶ 1.a, 1.b, 1.e, and 1.f.

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. 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 has not mitigated 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.b:

Against Applicant

Subparagraphs 1.c-1.d:

For Applicant

Subparagraphs 1.e-1.f:

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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge